124-558

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~498.~~ 154

THE UNITED STATES, APPELLANT,

vs.

THE BRITISH STEAMER STRATHAIRLY, HER TACKLE, APPAREL, FURNITURE, &c., JOHN McINTYRE, THE YOUNGER OF THAT NAME, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 23, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 438.

THE UNITED STATES, APPELLANT,

VS.

THE BRITISH STEAMER STRATHAIRLY, HER TACKLE, APPAREL, FURNITURE, &c., JOHN McINTYRE, THE YOUNGER OF THAT NAME, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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1 *Certificate that appeal has been perfected.*

United States district court, district of California.

THE UNITED STATES OF AMERICA, LIBELLANT & appellants,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER tackle, apparel, & furniture, John McIntyre, the younger of that name, claimant and appellee.

I, Southard Hoffman, clerk of the district court of the United States for the district of California, do hereby certify that the appeal of the United States of America, libellant in the above-entitled cause, from the final decree therein in said district court, was duly perfected on the eleventh day of September, A. D. 1882.

Attest my hand and the seal of said district court this fifteenth day of September, A. D. 1882.

[SEAL.]

SOUTHARD HOFFMAN,
Clerk U. S. Dist. Court, Dist. Cal.

2 (Endorsed:) In the United States circuit court, dist. of California. Certificate that appeal has been perfected. Filed Sept. 15, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

3 *Formal appeal.*

Circuit court of the United States, ninth circuit, and district of California.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER engines, tackle, apparel, and furniture, &c., John McIntyre, the younger of that name, claimant and appellee.

PHILIP TEARE, Esq.,
U. S. Attorney
MILTON ANDROS, Esq.,
Proctor for appellee.

APOSTLES.

UNITED STATES OF AMERICA:

In the circuit court of the United States, ninth circuit, district of California.

To the honorable the circuit court of the United States for the district of California in the ninth circuit:

4 The appeal of the United States, the libellant herein, respectfully showeth, that heretofore, to wit, on the 1st day of July, A. D. 1882,

Philip Teare, United States attorney for the district of California, on behalf of said libellant, the United States, filed a certain libel setting forth in the certain counts the reasons claimed therein for the forfeiture of said steamer Strathairly, her tackle, furniture, engines, and apparel, which said grounds being the foreclosure of certain liens to which said steamer was and is therein alleged to be liable, which said libel required due notice to be given to all persons interested in said steamer to appear and answer and in accordance with the rules of this court to show cause, if any, why said liens should not be foreclosed and said steamer forfeited for the payment thereof.

That process on said libel was duly issued and the same duly served on said steamer and the master thereof, and afterwards, on the 1st day
5 of July, A. D. 1882, filed other claims in due form in the said district court to said steamer and her appurtenances, together with the necessary stipulations for costs; and all due proceedings being had, a certain bond and writing obligatory was, in accordance with a stipulation, duly entered into and filed for the release of said vessel the same day for the sum of $22,580.00 conditioned to be paid upon a judgment of forfeiture being rendered as asked for in said libel.

That afterwards, on the 25th day of July, A. D. 1882, said claimants filed certain exceptions to said libel and all thereof, which said exceptions were afterwards, on the 27th day of July, A. D. 1882, duly argued and submitted to said hon. district court.

That afterwards, on the 30th day of August, A. D. 1882, said hon. district court, having duly considered said exceptions, rendered and entered a final decree dismissing said libel and all thereof, on the grounds set forth in said exceptions, as reference thereto will more fully disclose.

6 And this appellant is advised and insists that the said decree is erroneous, in this, that said libel of information ought not to have been dismissed, but that said exceptions should have been overruled and dismissed.

And said appellant, for these and other reasons, appeals from the whole of said decree to the next term of the said circuit court of the United States in and for said ninth circuit, district of California, to be held in said district, and on said appeal to have said cause heard anew in said circuit court on the pleadings and proofs in said district court and on proofs to be introduced in said circuit court and new allegations to be made thereon.

Wherefore this appellant prays that the record and proceedings in said district court may be returned to said circuit court, and that said decree may be revoked, or that such other decree thereon be made as to
7 said circuit court may seem just, and that the appellee may be compelled to pay to the appellant his costs in the premises.

PHILIP TEARE,
United States Attorney for the District of California.

(Endorsed:) Service of a copy of the within appeal is hereby acknowledged this 9th day of September, A. D. 1882. Milton Andros, proctor for claimant. Filed in U. S. district court September 11th, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

8 *Libel of information.*

In the district court of the United States, district of California.

To the Hon. Ogden Hoffman, judge of the district court of the United States for the district of California:

The libel of Philip Teare, attorney of the United States for the district of California, who prosecuted on behalf of the said United States against the British steamer Strathairly, now lying in the port and harbour of San Francisco, California, and within the jurisdiction of this court, and against the engines, tackle, and apparel of said vessel, of which said vessel W. B. Fenwick was and is master, and against all persons intervening for their interests therein, in a cause of forfeiture for the recovery of penalties and the enforcement of a lien, civil and maritime; and said libellant herein alleges, articulates, propounds, and gives said court to understand and be informed as follows, to wit:

9 I. That said vessel is a vessel propelled in whole or part by steam, and is owned by a certain subject, or by subjects of Great Britain, whose names are to libellant unknown, and that W. B. Fenwick was at all the times herein mentioned and still is the master and in command of said vessel.

II. That under and by virtue of the laws of the United States in that behalf enacted it was at all the times hereinafter mentioned, and now is unlawful for the master of any vessel, either foreign or domestic, bound from the port of Hong-Kong, or any other port in the Empire of China, or of any foreign country not contiguous to the United States, to any port within the United States to take on board any passengers in excess of the number fixed by law in proportion to the space or tonnage of said vessel as prescribed by law, with intent to land said passengers within the jurisdiction of the United States and to land the same therein.

10 III. That heretofore, to wit, on the 17th day of April, A. D. 1882, and at all the times herein mentioned, the said vessel was and is a vessel propelled in whole or in part by steam, and commanded by W. B. Fenwick as master, and was and is of the following dimensions and superficial capacity in the spaces appropriated therein to the use of passengers, to wit:

In the deck houses, 241 superficial feet.

On the main deck, 6,761 superficial feet.

On the lower deck, 6,108 superficial feet.

That the total capacity of the space appropreated to the use and carriage of passengers on said vessel is and was at all the times herein mentioned was and is as above stated.

That the legal allowance of the number of passengers which said vessel was at all said times and is permitted by law to carry and bring into the United States, in proportion to her space, is as follows, to wit, a capacity and room to carry seven hundred and thirty (730) steerage passengers and no more.

11 III. That heretofore, on the 17th day of April, A. D. 1882, said steamer Strathairly, in command of said W. B. Fenwick as master thereof, was engaged in carrying passengers from the port of Hong-Kong, China (a foreign port not contiguous to the United States), to the port

of San Francisco, California, in said United States, and did then and there, at said port of Hong-Kong, by permission, order, and direction of said W. B. Fenwick as master, receive on board a large number, to wit, ten hundred and fifty-six (1056) steerage passengers, the same being three hundred and twenty-six (326) steerage passengers in excess of and greater than the number of passengers in proportion to said space and superficial feet of room in said vessel as aforesaid appropreated for the use and for the carriage of said passengers.

That said ten hundred and fifty-six (1056) steerage passengers was and is three hundred and twenty-six (326) more passengers than said vessel was by law allowed to carry, to wit, three hundred and twenty-six
12 more than seven hundred and thirty, the number of steerage passengers said vessel was at all said times and is allowed by law to bring from said foreign port unto the United States, or any part thereof.

IV. That said ten hundred and fifty-six (1056) steerage passengers so taken on board said vessel, at said port of Hong-Kong, China, by said W. B. Fenwick, master as aforesaid, of said vessel, were then and there taken on board thereof with the intent and purpose to bring them and all of them into the port of San Francisco, California, the same being within the United States, and in pursuance of said intention said vessel did afterwards, on the 17th day of April, A. D. 1882, in command of said W. B. Fenwick, leave said port of Hong Kong, China, and sailed for, and afterwards, on the 21st day of May, A. D. 1882, did arrive within the jurisdiction of the United States, at the port and city of San Francisco, State of California, with all of said ten hundred and
13 fifty-six steerage passengers on board, and with said Fenwick in command as master of said vessel.

That afterwards, on the 21st day of May, A. D. one thousand eight hundred and eighty-two, said ten hundred and fifty-six steerage passengers and all thereof were by said W. B. Fenwick, as such master, landed from said vessel within the jurisdiction of the United States, at said port and city of San Francisco, State of California.

V. Whereby, and by reason whereof, said W. B. Fenwick became and is liable to a penalty and fine of fifty ($50) dollars, for each of said three hundred and twenty-six (326) steerage passengers in excess of said seven hundred and thirty (730) which said vessel was by law allowed to carry to and land within the jurisdiction of the United States, which said penalties amount to the sum of sixteen thousand three hundred ($16,300)
14 dollars, which said amount was and is made a lien by the laws of the United States on said vessel, her tackle, furniture, engines, and apparel.

VI. And said libellant saith that heretofore, to wit, on the 30th day of June, A. D. 1882, in this hon. court a criminal information was duly filed by the United States attorney of said district of California, charging said W. B. Fenwick with the crime and misdemeanor of unlawfully bringing into the port of San Francisco aforesaid three hundred and twenty-six (326) more passengers than said vessel was by law allowed to carry and bring in proportion to her space as aforesaid; to which said charge said W. B. Fenwick then and there, on being duly arraigned, pleaded guilty to the said offence of bringing unlawfully as alleged in said information two hun-

dred and twenty-three (223) of said steerage passengers on said vessel from said port of Hong-Kong to said port of San Francisco, in manner and form as hereinbefore set forth.

15 That afterwards, on said 30th day of June, A. D. 1882, said W. B. Fenwick being called for sentence on said plea of guilty, was, then and there, by the judge of this court duly sentenced to pay a fine of fifty ($50) dollars for each of said two hundred and twenty-three passengers, amounting to the sum and amount of eleven thousand one hundred and fifty ($11,150) dollars, which said amount was duly entered against said W. B. Fenwick, and the same remains unpaid, and is now due and unpaid, and all thereof is now due and payable to the United States, and is by law made a lien on said vessel, her engines, furniture, and apparel.

VII. And libellant saith that all and singular said premises are true, and within the admiralty and maritime jurisdiction of the United States and of this court.

VIII. Wherefore said libellant prays that the usual process and
16 monition of this hon. court, according to rules and procedure in admiralty, may issue against said vessel, and that all persons in general and special having and claiming to have any interest in said vessel be cited and admonished to appear in said court on a day to be fixed, to answer these premises, and all due proceedings being had herein, that this hon. court do pronounce and decree in favor of said libellant for said sum of sixteen thousand three hundred ($16,300) dollars, and that the same be decreed and adjudged to be a lien on said vessel and that the proper order be made enforcing said lien against said vessel, and that the same be sold to pay the said claim and lien of libellant, together with the costs of this proceeding, and that libellant have such other and further relief as may be just and legal.

SECOND COUNT.

17 And said libellant, for a further and other cause of action against said vessel, saith, propounds, and gives said court to understand and be informed as follows, to wit:

I. That on the 17th day of April, A. D. 1882, said steamer Strathairly was at the port of Hong-Kong, China, a foreign port not contiguous to the United States, and in command of W. B. Fenwick aforesaid as the master thereof, who was at all the times herein mentioned and still is the master of said vessel.

That said vessel, being as aforesaid at said port of Hong-Kong, on said day did then and there, by consent and direction of said master, to wit, said W. B. Fenwick as the master thereof, did take on board said vessel, at said port of Hong-Kong, China, a large number, to , ten hundred and fifty-six (1,056) steerage passengers, which said passengers and all thereof he then and there took on board said vessel, with intent and purpose to bring them into the United States at the said port of San Francisco.

18 II. And said libellant saith that afterwards, on the 21st day of May, A. D. 1882, said vessel with the said ten hundred and fifty-six (1,056) steerage passengers on board arrived at said port of San Francisco, California, and d'd bring said passengers to said port, and did land

said passengers and all thereof at said port last named and within the jurisdiction of the United States.

III. And said libellant saith that said vessel at all said times herein mentioned did not have any berths therein or thereon for the accommodation and use of said passengers, and did not have any berths wel: or otherwise constructed parallel with the sides of said vessel, and did not have any berths constructed as berths ordinarily are and separated from each other by partitions in any manner whatever.

IV. And said libellant saith that said vessel at all said times
19 herein mentioned did not have any berths thereon or therein constructed six feet in length and two feet in width, nor any berths so constructed as to be occupied by no more than two women, or by one man and two children under the age of eight years, or by a husband and wife, or by a man and two of his own children under the age of eight years, or by two men members of the same family, but on the contrary said libellant doth say that at all said time and times the berths and sleeping accommodations of said vessel for the use of her said passengers consisted only of a single continuous bunk or shelf running the entire length of said vessel, without any partition or separation, wherein said ten hundred and fifty-six (1,056) passengers were compelled to sleep together as in one bed or berth, without any regard to sex, age, or family relation, all of which was and is in violation of the statutes of the United States in that behalf made and provided.

V. Whereby and by reason of the premises herein stated the
20 said W. B. Fenwick, master of said vessel, and the owners of said vessel, whose names are unknown to said libellant, became and are liable to a penalty of five dollars for each of said ten hundred and fifty-six (1,056) passengers, amounting to the sum five thousand two hundred and eighty ($5,280) dollars, which is due and payable to the said United States, and is by the laws of the United States made a lien on said vessel, its engines, furniture, accoutrements, and appurtenances.

VI. And said libellant saith that said sum and amount of five thousand two hundred & eighty ($5,280) is now due and unpaid, and the master and owner and owners of said vessel are indebted to said United States in said amount, and the said debt and amount is still a lien on said vessel as aforesaid, and is wholly unpaid.

VII. And said libellant saith that all said premises are true and
21 within the admiralty and maritime jurisdiction of the United States and of this hon. court.

VIII. Wherefore said libellant prays that the usual process and monition of this court issue, in accordance with the rules of this court in admiralty cases, and that all persons interested or claiming any interest in said vessel be cited and admonished in general and in special to appear in said court on a day certain to answer these premises; and that all due proceedings being had herein that this hon. court will pronounce and decree in favor of this libellant for said sum of five thousand two hundred and eighty ($5,280) dollars, and will decree the same to be a lien on said vessel; and further, that said vessel be sold to pay said lien and the amount thereof, together with the costs of these proceedings, and that libellant have such other and further relief as may be just and legal.

22 THIRD COUNT.

And said libellant, for a further and other cause of action against said vessel to wit, said steamer Strathairly, alleges, propounds, and gives said court to understand and be informed, to wit:

I. That heretofore, to wit, on the 17th day of April, A. D. 1882, the said steamer Strathairly was at the port of Hong-Kong China, a foreign port not contiguous to the United States, and said vessel being then and there at said port in command of W. B. Fenwick, who was then and there the master thereof, did take on board a large number, to wit (1,056), ten hundred and fifty-six steerage passengers, with which said passengers on board said vessel he afterwards set sail for the port of San Francisco, State of California, a port within the jurisdiction of and within the United States of America.

23 And libellant saith that when said master of said vessel took said passengers on board said vessel he intended to bring and land them within the United States at said port of San Francisco.

And said libellant avers that afterwards, on the 21st day of May, 1882, said vessel, in command of said W. B. Fenwick master, and with all said passengers on board, arrived at the port and city of San Francisco, California, within the United States and in the jurisdiction of the United States.

II. And said libellant saith that said master of said vessel, to wit, said W. B. Fenwick, did, at the time of delivering to the collector of customs of the port of San Francisco a manifest of his cargo and the report of the entry of his said vessel, fail, neglect, and refuse, and ever since has unlawfully, wilfully, and knowingly failed, neglected, and refused to deliver and report to said collector of the said district and port of San Francisco a list of all the passengers taken on board of the said vessel at the said

24 port of Hong-Kong, China, as aforesaid, and brought on said vessel to said port of San Francisco as aforesaid.

And said libellant saith that said master of said vessel to wit, said W. B. Fenwick, being at said time master of said steamer Strathairly, did, on the arrival of the said vessel at said port of San Francisco, knowingly, unlawfully, and wilfully deliver and report to the collector of customs of said district and port of San Francisco a false, fraudulent, and pretended list of the passengers taken on board said vessel as aforesaid at said port of Hong-Kong, which said list falsely represents and sets forth that said vessel took on board at said port of Hong-Kong eight hundred and twenty-nine (829) passengers for said voyage herein set forth, and did bring said number and no more on said vessel to said port of San Francisco as aforesaid, when in truth he, at said port of Hong-Kong, took on board said vessel as aforesaid, for said voyage, ten hundred and fifty-six passengers, and

25 did bring the same and all thereof to the United States at said port of San Francisco, and then and there land the same as above herein set forth.

III. Whereby and by reason whereof the premises herein stated the said W. B. Fenwick, master of said vessel, became and is liable to a fine and penalty of one thousand ($1,000) dollars, which said amount is due and payable to the United States aforesaid, and all thereof is now due and unpaid, and the same and all thereof is by the laws of the United

States made a lien on said vessel, her tackle, apparel, and engines, in favor of and for the benefit of the United States.

IV. And said libellant saith that all said premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

V. Whereof said libellant prays that the usual process and monition of this court issue, in accordance with the rules of this court in ad-
26 miralty and maritime cases, and that all persons interested or claiming any interest in said vessel be cited and admonished in general and in special to appear in said court, on a day certain, to answer these premises; and that all due proceedings being had herein, that this honorable court will pronounce and decree in favor of libellant for said sum of one thousand dollars, and decree the same to be a lien on said vessels; and, further, that said vessel be sold to pay said claim, and the amount thereof, with the costs of this action, and that libellant have such other and further relief as may be just and legal.

VI. Lastly, said libellant saith that all the above premises are true, and within the admiralty and maritime jurisdiction of the United States and of this court.

Wherefore libellant asks that the usual process, order, and monition of this court issue, and that due and legal notice be given to all proper persons as aforesaid to be and appear on a day certain in said court to
27 answer these premises; and all due proceedings being had herein, that this hon. court will pronounce and decree in favor of said libellant for all said sums, amounting to the sum of twenty-two thousand five hundred and eighty ($22,580) dollars, and that the same be declared to be a lien on said vessel, and that said lien be declared to be foreclosed, and that an order and decree be made that said vessel and all the accouterments, engines, and furniture be sold to satisfy the same, together with the costs of this proceedings, and that libellant have such further and other relief as may be legal and just.

PHILIP TEARE,
United States Attorney for California.

(Endorsed:) Filed July 1st, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

28 *Claim.*

UNITED STATES OF AMERICA:

District court of the United States of America for the district of California.

THE UNITED STATES, LIBELLANT,
vs.
THE BRITISH STEAMSHIP STRATHAIRLY, ETC., } In admiralty.
John McIntyre, the younger of that name, claimant.

To the honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

The claim of John McIntyre, the younger of that name, to the steamship Strathairly, her tackle, apparel, and furniture, now in the custody of

the marshal of the United States for the said district of California, at the suit of the United States, alleges that he is the true and bona-fide owner of the said steamship Strathairly, her tackle, apparel, and furniture, and that no other person is owner thereof.

29 Wherefore this claimant prays that this honorable court will be pleased to decree a restitution of the same to said John McIntyre, the younger of that name, and otherwise right and justice to administer in the premises.

W. B. FENWICK.

W. B. Fenwick deposes that John McIntyre, the younger of that name, resides in the United Kingdom of Great Britain and Ireland, and out of the district of California, and that the deponent is duly authorized as the master and bailee of said vessel to make the foregoing claim on his behalf.

W. B. FENWICK.

MILTON ANDROS,
Proctor for Claimants.

DISTRICT OF CALIFORNIA, *ss:*

Sworn to before me this 1st day of July, A. D. 1882.

A. D. GRIMWOOD,
Commissioner U. S. Circuit Court, District of California.

(Endorsed:) Filed July 1st, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

30 *Claimants' stipulation for costs.*

UNITED STATES OF AMERICA:

District court of the United States for the district of California.

Whereas a libel was filed in this court on the first day of July, in the year of our Lord one thousand eight hundred and eighty-two, by Philip Teare, U. S. attorney, on behalf of the United States against the steamship Strathairly, her tackle, apparel, &c., for reasons and causes in the said libel mentioned; and whereas John McIntyre, the younger of the name, has appeared and claimed the said steamship Strathairly, her tackle, apparel, and furniture, as the owner thereof, and the said John McIntyre, the younger of that name, and Robert Balfour and Stewart Menzies, his sureties, parties hereto, thereby consenting and agreeing that, in case of default or contumacy on the part of the said claimant or his sureties, execution may issue against their goods, chattles, and lands for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit
31 of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the claimant above named shall pay all costs and charges that may be awarded

against them in any decree by this court, or in case of appeal by the appellate court.

JOHN McINTYRE, JR.,
By his Att'y in Fact.
W. B. FENWICK.
R. BALFOUR.
STEWART MENZIES.

Taken and acknowledged this 1st day of July, 1882, before me.
A. D. GRIMWOOD,
Commissioner United States Circuit Court, District of California.

DISTRICT OF CALIFORNIA, *ss:*

Robert Balfour and Stewart Menzies, parties to the above stipulation, being duly sworn, do depose and say each for himself that he is worth the sum of five hundred dollars over and above his debts and liabilities.

R. BALFOUR.
STEWART MENZIES.

Sworn to this 1st day of July, 1882, before me.
A. D. GRIMWOOD,
Commissioner United States Circuit Court, District of California.

(Indorsed:) Filed the 1st day of July, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

32 *Stipulation that vessel be released upon stipulation in* $22,580.00.

UNITED STATES OF AMERICA,
District of California, ss:

District court of the United States.

THE UNITED STATES OF AMERICA
vs.
THE SHIP STRATHAIRLY, ETC., JOHN McINTYRE, JR., claimant. } In admiralty.

It is hereby stipulated that said above-named steamship may be released from arrest on the claimant giving a stipulation, with sufficient sureties, in the sum of twenty-two thousand five hundred and eighty dollars.

A. P. VAN DUZER,
Assistant U. S. Att'y, Proctor for Libellant.
MILTON ANDROS,
Proctor for Claimant.

(Endorsed:) Filed July 1st, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

33 *Admiralty stipulation on release of vessel.*

District court of the United States for the district of California. In admiralty.

Stipulation entered into pursuant to the rules of practice of this court.

Whereas a libel of information was filed on the 1st day of July, in the year of our Lord one thousand eight hundred and eighty-two, by Philip Teare, United States attorney for the district of California, on behalf of the United States, against the Steamship Strathairly, her tackle, apparel, and furniture, for the reasons and causes in the said libel of information mentioned;

And whereas the said steamship Strathairly, her tackle, apparel, and furniture, is in the custody of the marshal under the process issued in pursuance of the prayer of said libel of information, and has been claimed by John McIntyre, the younger of that name;

And whereas it has been stipulated that the said steamship Strathairly may be released from arrest on the claimant giving a stipulation
34 with sufficient sureties in the sum of $22,580, as appears from said stipulation now on file in said court, and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the said claimant or his sureties, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such that if the stipulator undersigned shall at any time upon the interlocutory or final order or decree of the said district court, or of any appellate court, to which the above-named suit may proceed, and upon notice of such order or decree to Milton Andros, esquire, proctor for the claimant of said steamship Strathairly, her tackle, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

JOHN McINTYRE,
By R. BALFOUR.
R. BALFOUR.
35 STEWART MENZIES.

Taken and acknowledged this 1st day of July, 1882, before me.
A. D. GRIMWOOD.
Commissioner U. S. Circuit Court, District of California.

DISTRICT OF CALIFORNIA, *ss:*

Robert Balfour and Stewart Menzies, parties to the above stipulation, being duly sworn, depose and say, each for himself, that he is worth the sum of twenty-two thousand five hundred & eighty dollars over and above all his just debts and liabilities.

R. BALFOUR.
STEWART MENZIES.

Sworn to this 1st day July, 1882, before me.
A. D. GRIMWOOD,
Commissioner U. S. Circuit Court, District of Cal.

(Indorsed:) Filed the 1st day of July, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

36 *Stipulation that liability, if any, of master of steamship Strathairly may be ascertained on trial of this cause.*

UNITED STATES OF AMERICA:

District court of the United States of America for the district of California.

THE UNITED STATES OF AMERICA, libellant,
vs.
THE BRITISH STEAMSHIP STRATHAIRLY, etc.
} In admiralty.

It is hereby stipulated that the liability, if any, of the master of said steamship Strathairly for the penalties provided for in sections 4255 and 4266 of the Revised Statutes may be ascertained on the trial of the above-entitled cause as fully and with the same force and effect as if the same were ascertained on the trial of a proceeding against said master to recover said penalty and a judgment therefor had been entered against him. And all exceptions to said libel that the liability of said master, if any, was not ascertained on a proceeding against him prior to filing said libel is hereby waived, but the question of the liability of said
37 master under said sections is not waived.

MILTON ANDROS,
Proctor for Claimant.
PHILIP TEARE,
U. S. Attorney.

(Endorsed:) Filed July 1st, A. D. 1882. Southard Hoffman, clerk, by A. D. Grimwood, dep. cl'k.

38 *Monition.*

DISTRICT OF CALIFORNIA, *ss:*

[SEAL.] The President of the United States of America to the marshal of the United States for the district of California, greeting:

Whereas an information hath been filed in the district court of the United States for the district of California, on the 1st day of July, in the year of our Lord one thousand eight hundred and eighty two, by Philip Teare, esq., United States attorney for the district of California, on behalf of the United States, against the British steamship Strathairly, her tackle, apparel, furniture, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship Strathairly, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said steamship Strathairly, her tackle, &c., may, for the causes in the
39 said information mentioned, be condemned and sold to pay the demands of the United States.

You are, therefore, hereby commanded to attach the said steamship

Strathairly, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said information, that they be and appear before the said court, to be held in and for the district of California, on Tuesday, the 25th day of July, 1882, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done on the premises do you then and there make return thereof, together with this writ.

40 Witness the Hon. Ogden Hoffman, judge of said court, at the city of San Francisco, in the district of California, this 1st day of July, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and sixth.

SOUTHARD HOFFMAN,
Clerk,

By A. D. GRIMWOOD,
Deputy Clerk.

PHILIP TEARE, Esq.,
U. S. Attorney.

In obedience to the within monition, I attached the property therein described on the 1st day of July, 1882, and have given due notice to all persons claiming the same that this court will on the 25th day of July, 1882 (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

M. M. DREW,
U. S. Marshal.

41 By W. L. McEWEN,
Deputy.

Dated July 1, 1882.

(Endorsed:) Filed July 25th, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy.

42 *Order.—Proclamation.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the 25th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Present, the honorable Ogden Hoffman, judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP STRATHAIRLY, HER TACKLE, apparel, and furniture. } No. 1042.

The monition heretofore issued herein having been returned duly executed, on motion of Mr. Teare, United States attorney, it is ordered that procla-

mation be made. Proclamation was thereupon duly made, whereupon, upon motion of Mr. Milton Andros, proctor for claimants, it is ordered that claimant have ten days after the decision on claimant's exceptions to the libel herein within which to plead. On motion of the at-
43 torney for the United States, it is further ordered that the default of all persons not in court be, and the same is hereby, entered.

44 *Exceptions to libel of information.*

UNITED STATES OF AMERICA:

District court of the United States of America for the district of California.

THE UNITED STATES, LIBELLANT,
vs.
THE BRITISH STEAMSHIP STRATHAIRLY, ETC., John McIntyre, jr., claimant. } In admiralty.

To the honorable Ogden Hoffman, judge of the district court of the United States for the district of California:

Exceptions taken by the claimant in the above-entitled cause to the libel of the United States, libellant herein.

Exception to the first cause of action.

1st exception:

For that in the first supposed cause of action in said libel are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

45 Exceptions to the second cause of action.

1st exception:

For that in said second supposed cause of action in said libel are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

2d exceptions:

For that it appearing in and by said supposed cause of action, that the said ship Strathairly was at all the times in said libel mentioned a vessel propelled in whole or in part by steam, neither the master nor owners thereof are subject or liable to the penalty provided for by section four thousand two hundred and fifty-five of the Revised Statutes of the United States, and that no lien does or can attach on said vessel under section four thousand two hundred and seventy of the Revised Statutes of the United States.

Exceptions to the third cause of action.

1st exception:

46 For that in the said third supposed cause of action are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

In all of which particulars said libel is imperfect and insufficient.

Wherefore this claimant is not bound to answer the same, and now prays this honorable court here that said libel be dismissed, and for his costs.

MILTON ANDROS,
Proctor for Claimant.

(Endorsed:) Filed July 25th, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

47 *Order—Hearing on exceptions.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Wendesday, the 26 day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Present, the honorable Ogden Hoffman, judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP STRATHAIRLY, HER TACKLE, apparel, & furniture. } No. 1042.

In this cause the claimant's exceptions to the libel of information herein, were this day brought on for hearing and were duly argued by Milton Andros, esq., proctor for claimants, and thereupon the further argument thereof was continued until to-morrow, Thursday, July 27th, A. D. 1882, at eleven o'clock a. m.

48 *Order—Exceptions submitted.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Thursday, the 27th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Present, the honorable Ogden Hoffman, judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP STRATHAIRLY, HER TACKLE, apparel, and furniture. } No. 1042.

In this cause the claimant's exceptions to the libel of information herein were this day brought on for further hearing and were duly argued by A. P. Van Duzer, esquire, assistant United States attorney on behalf of the United States and by Milton Andros, esq'r, proctor for claimants, and submitted to the court for consideration and decision.

49 *Order sustaining exceptions.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room in the city of San

Francisco, on Wednesday, the 30th day of August, in the year of our Lord one thousand eight hundred and eighty-two.

Present, the honorable Ogden Hoffman, judge.

THE UNITED STATES OF AMERICA
vs.
THE STEAMSHIP STRATHAIRLY, &C. } No. 1042.

In this cause the claimant's exceptions to the libel of information herein having been heretofore argued and submitted, and due consideration having been thereon had, it is by the court now here ordered that said exceptions be, and the same are hereby, sustained and the libel of information herein dismissed. And thereupon a decree to that effect was duly signed and entered.

50 *Decree.*

In the district court of the United States in and for the district of California.

THE UNITED STATES, LIBELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER tackle, apparel, and furniture, John McIntyre, jr., claimant.

This cause having been heard on exceptions filed by the claimant of said steamer to the libel of information filed by Philip Teare, attorney of the United States for the said district of California, for and on behalf of the said United States, and said exceptions having been argued by the advocates for the respective parties, and due deliberation having been had, this court doth now order, adjudge, and decree that the said exceptions be, and the same hereby are, sustained, and that the said libel of information be, and the same hereby is, dismissed.

And on motion of the proctor for the claimant, it is further ordered
51 that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this court and by the statute in such case made and provided, the claimant's stipulation given on the release of said vessel from arrest and for costs be cancelled.

Dated August 30th, 1882.

OGDEN HOFFMAN,
District Judge.

(Endorsed:) Filed August 30th, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

52 *Notice of appeal.*

District court of the United States for the district of California.

THE UNITED STATES
vs.
THE BRITISH STEAMER STRATHAIRLY, &C. } No. 1042.

SIR: The libellant appeals from the final decree of the court in this case to the next circuit court.

Yours truly,

A. P. VAN DUZER,
Asst. U. S. Attorney, Proc. for Libellant.

Dated Sept. 6, 1882.

To MILTON ANDROS,
Proc. for Claimant.

(Endorsed:) Service of a copy of the within notice of appeal acknowledged this 6th day of September, 1882. Milton Andros, proctor for claimants. Filed September 7th, 1882. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

53 In the U. S. district court, district of California.

THE UNITED STATES
vs.
BRITISH STEAMER STRATHAIRLY, &C.

To Southard Hoffman, Esq., clerk of said court, and Milton Andros, Esq'r., proc. for claimant:

GENTLEMEN: Please take notice that the libellant appeals from the final decree of the district court aforesaid in this cause to the next term of the circuit court of the United States for the ninth circuit, district aforesaid.

Your', &c.,

A. P. VAN DUZER,
Asst. U. S. Attorney, for Libellant.

(Endorsed:) Due service by copy admitted this 9th day of September, A. D. 1882. Milton Andros, proc. for cla'm't. Filed September 11th, 1882, at 2.30. Southard Hoffman, clerk, by A. D. Grimwood, deputy clerk.

54 *Certificate.*

UNITED STATES OF AMERICA,
District of California, ss:

I, Southard Hoffman, clerk of the district court of the United States for the district of California, do hereby certify that the foregoing and hereunto annexed fifty (50) pages, numbered from 1 to 50, inclusive, contain a full, true, and correct transcript of the record in said district court in the cause

entitled The United States of America vs. The British Steamship Strathairly, *t*her tackle, apparel, and furniture, made up pursuant to rule 52 of the rules of the Supreme Court of the United States.

Witness my hand and the seal of said district court, at San Francisco, California, this 27th day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of our Independence the one hundred and seventh.

[SEAL.] SOUTHARD HOFFMAN,
Clerk U. S. Dist. Court, Dist. Cal.

(Endorsed:) United States circuit court & dist. of California. Filed September 27, 1882. L. S. B. Sawyer, clerk, by J. F. O'Beirne, deputy clerk.

55 *Enrollment.*

Circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER engines, tackle, apparel, and furniture, &c., John McIntyre, the younger of that name, claimant and appellee. } No. 2898.

On the 27th day of September, 1882, a certified transcript of the record in the above-entitled cause, on appeal from the district court of the United States for the district of California, was filed in this court.

Thereafter, to wit, on the 10th day of March, 1884, an order was made and entered herein in the words and figures following, to wit:

56 At a stated term, to wit, the February term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room, in the city and county of San Francisco, on Monday, the 10th day of March, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Lorenzo Sawyer, circuit judge.

Order affirming decision of U. S. district court.

THE UNITED STATES OF AMERICA, LIBELLANT and appellant,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER tackle, apparel, & furniture, &c., John McIntyre, the younger of that name, claimant and appellee. } No. 2898.

57 This cause, heretofore argued and submitted to the court for consideration and decision, upon the appeal from the final decree of the district court of the United States for the district of California, in the cause entitled The United States, libellant, vs. The British Steamer

Strathairly, her tackle, apparel, and furniture, John McIntyre, jr., claimant, having been duly considered, it is ordered that said decree be, and the same hereby is, affirmed.

I hereby certify that the foregoing is a full, true, and correct copy of an original order made and entered in the above-entitled cause.

Attest my hand and the seal of said circuit court this 10th day of March, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk.*

58 *Clerk's certificate.*

Whereupon said certified copy of record and certified copy of order are hereto annexed, said order being duly certified and enrolled.

Attest:

[SEAL.] L. S. B. SAWYER, *Clerk*,
By F. D. MONCTON, *Deputy Clerk.*

(Endorsed:) Enrolled papers. Filed March 10th, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

58½ *Enrollment.*

United States circuit court, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, &C., claimant and appellee.

On the 3d day of October, 1884, a final decree was filed and entered herein in the words and figures following, to wit:

59 *Decree.*

UNITED STATES OF AMERICA:

Circuit court of the United States of America for the district of California, in the ninth circuit.

At a stated term of the circuit court of the United States of America for the district of California, in the ninth circuit, held at the city of San Francisco on Friday, the third day of October, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable Lorenzo Sawyer, circuit judge.

UNITED STATES, LIBELLANT AND APPELLANT,
vs.
STEAMSHIP STRATHAIRLY, ETC., JOHN MCINTYRE, jr., claimant and appellee.
No. 2898. In admiralty.

This cause having been brought on for hearing on appeal from the district court of the United States of America for the district of California,

upon the transcript of the record on file herein, and the advocates
60 of the respective parties having been heard, and the said transcript having been examined, and due deliberation being had in the premises by the court:

It is now ordered, adjudged, and decreed that the exceptions interposed by said claimant to said libel of information be, and the same hereby are, allowed and sustained, and the said libel of information be, and the same hereby is, dismissed.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed and entered October 3, 1884. L. S. B. Sawyer, clerk.

61 Whereupon said certified copy of record, certified copy order, etc., and final decree, are hereto annexed, said decree being duly signed, filed, and enrolled pursuant to the practice of said circuit court.

Attest, &c.:

L. S. B. SAWYER,
Clerk,

[SEAL.] By F. D. MONCTON,
Deputy Clerk.

(Endorsed:) Filed October 3d, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

62 *Order allowing appeal.*

At a stated term, to wit, the July term, A. D. 1884, of the circuit court of the United States of America of the ninth judicial circuit, in and for the district of California, held at the court-room in the city and county of San Francisco, on Tuesday, the 7th day of October, in the year of our Lord one thousand eight hundred and eighty-four.

Present, the honorable George M. Sabin, U. S. district judge, district of Nevada.

THE UNITED STATES OF AMERICA, LIBELLANT and appellant, *vs.* THE BRITISH STEAMER STRATHAIRLY, HER tackle, apparel, & furniture, &c., John McIntyre, the younger of that name, claimant and appellee.	No. 2898.

On motion of Carroll Cook, esq., assistant U. S. attorney on behalf of the United States, it is ordered that an appeal from the decree filed and entered on the 3d day of October, A. D. 1884, being a day in the
63 July term, A. D. 1884, of said circuit court, to the Supreme Court of the United States, be, and the same hereby is, allowed, and that a certified transcript of the pleadings, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States.

64 In the circuit court of the United States, ninth circuit, district of California.

THE UNITED STATES OF AMERICA, LIBELLANT and appellant,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER tackle, apparel, and furniture, &c., John McIntyre, the younger of that name, claimant and appellee. } No. 2898.

I, L. S. B. Sawyer, clerk of the circuit court of the United States for the district of California, do hereby certify the foregoing sixty-three written pages, numbered from 1 to 63, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein-entitled cause, and that the same together constitute the transcript on appeal
65 to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said circuit court, this 9th day of October, A. D. 1884.

[SEAL.] L. S. B. SAWYER, *Clerk.*

66 UNITED STATES OF AMERICA, *ss:*

To the British steamer Strathairly, her tackle, apparel, and furniture, &c., John McIntyre, the younger of that name, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 13th day of October, A. D. 1884, pursuant to an order granting an appeal to said Supreme Court of the United States made and entered by the circuit court of the United States for the district of California from the decree filed and entered in said circuit court, in the cause entitled "The United States of America, &c., against the British steamer Strathairly, her tackle, apparel, and furniture, &c." (No. 2898), to show cause, if any there be, why the decree in the said order mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Geo. M. Sabin, judge of the U. S. district court, district of Nevada, holding circuit court of the United States for the district of California, this 8th day of October, A. D. 1884, and of the Independence of the United States the one hundred and ninth.

GEO. M. SABIN,
U. S. District Judge of Nevada, holding Circuit Court.

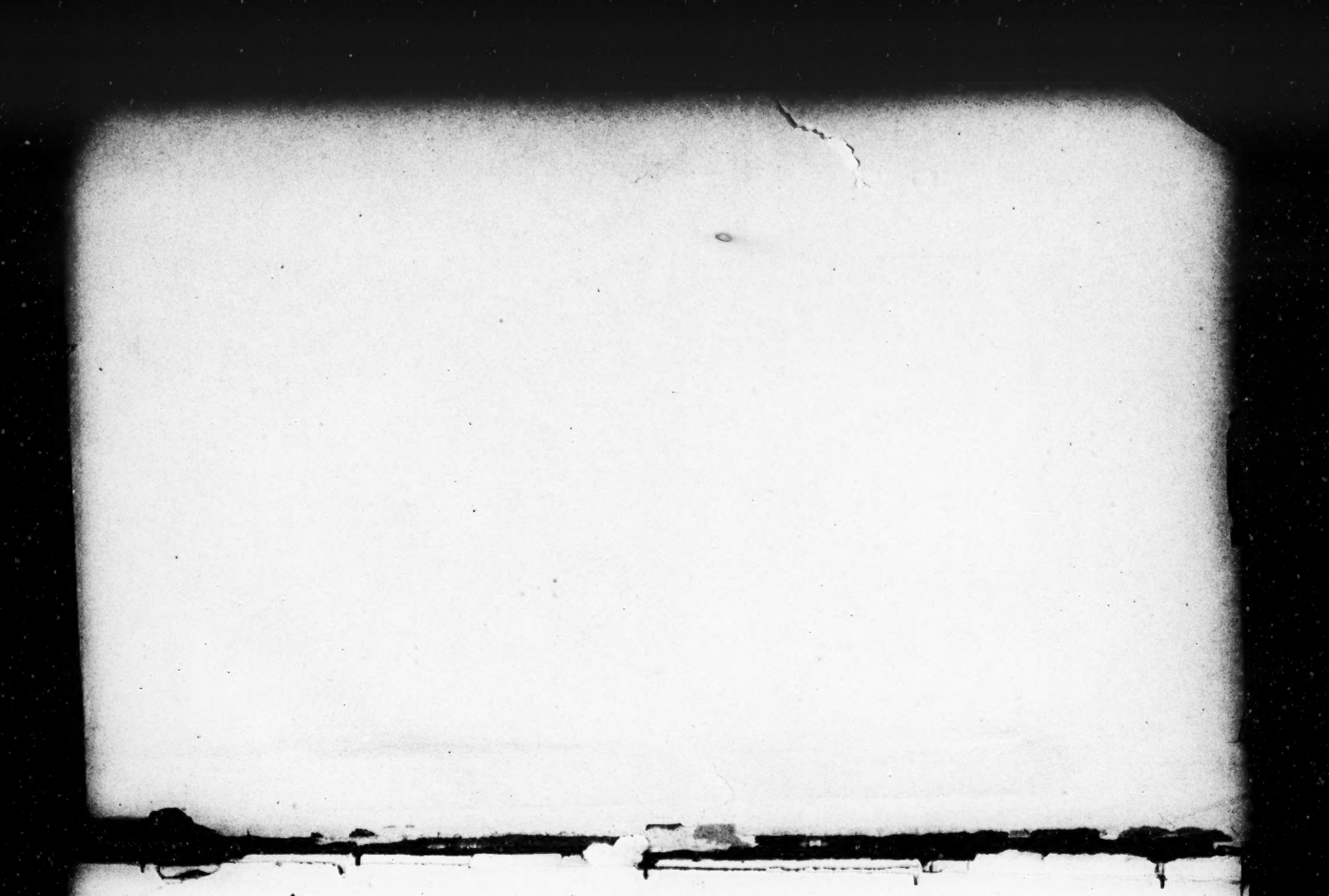
67 Service of the within citation and receipt of a copy thereof admitted, this eighth day of October, A. D. 1884.

MILTON ANDROS,
Proctor for Claimant.

(Indorsed:) No. 2898. In the Supreme Court of the United States. The United States of America vs. The British Steamer Strathairly, her

tackle, apparel, and furniture, &c. Citation. Filed October 8th, 1884. L. S. B. Sawyer, clerk, by F. D. Moncton, deputy clerk.

(Indorsement on cover:) No. 438. The United States, appellant, vs. The British steamer Strathairly, her tackle, apparel, & furniture, &c., John McIntyre, the younger of that name, claimant. California C. C. U. S. Filed 23d October, 1884.



124-53 8

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER TACKLE, APPAREL, FURNITURE, ETC., JOHN MCINTYRE, THE YOUNGER OF THAT NAME, CLAIMANT.
No. 154.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Brief for the Appellant.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THE UNITED STATES, APPELLANT,
vs.
THE BRITISH STEAMER STRATHAIRLY, HER TACKLE, APPAREL, FURNITURE, ETC., JOHN MCINTYRE, THE YOUNGER OF THAT NAME, CLAIMANT.
No. 154.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Brief for the Appellant.

This is a libel filed 1st July, 1882, by the United States in the district court of the United States for the district of California, for the purpose of enforcing against the British steamer *Strathairly* certain penalties alleged to have been

incurred by her under the legislation of Congress regulating the transportation of passengers.

The libel contains three counts—

First count.

This count charges that the *Strathairly* was engaged in carrying passengers from Hong-Kong, China, to San Francisco, and that her master received on board 1,056 steerage passengers, the same being 326 in excess of the number she was entitled to carry; and that said 1,056 steerage passengers were landed by the said master at San Francisco;

That the aggregate of the penalties incurred by said master for said violation of law is $16,300, being $50 for each passenger unlawfully transported;

That the said aggregate is a lien on said vessel and enforceable against her.

The libel also states that a criminal information had been lodged against said master, who, having pleaded guilty to transporting illegally 223 passengers, was sentenced to pay a fine of $50

for each of said passengers, being $11,150 in the aggregate;

Concluding with a prayer that the vessel may be sold to pay the amount claimed and costs (pp. 3–5).

Second Count.

This count proceeds on the ground that the *Strathairly* brought 1,056 steerage passengers from Hong-Kong to San Francisco without being provided with berths, as required by the laws regulating the transportation of passengers, and demands the penalty, $5 a passenger, making in all the sum of $5,280, and concludes with a prayer that the vessel may be sold to pay said sum (pp. 5, 6).

Third Count.

This count demands the penalty of $1,000, because the said Fenwick, master of the said ship, having brought from Hong-Kong to San Francisco in said ship 1,056 steerage passengers, falsely reported to the collector of the district and port of San Francisco that he had brought 829 pas-

sengers, and concludes with a prayer that all the said penalties, amounting to $22,580, may be declared a lien on the said vessel, and that the vessel may be sold to satisfy the same (pp. 7, 8).

The claimant filed the following exceptions to the libel:

EXCEPTION TO THE FIRST CAUSE OF ACTION.

For that in the first supposed cause of action in said libel are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

EXCEPTIONS TO THE SECOND CAUSE OF ACTION.

First exception.—For that in said second supposed cause of action in said libel are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

Second exception.—For that it appearing in and by said supposed cause of action that the said ship *Strathairly* was at all the times in said libel mentioned a vessel propelled in whole or in part by steam, neither the master nor owners thereof are subject or liable to the penalty provided for by section four thousand two hundred and fifty-five of the Revised Statutes of the United States, and that no lien does or can attach on said vessel under section four thousand two hundred and seventy of the Revised Statutes of the United States.

EXCEPTION TO THE THIRD CAUSE OF ACTION.

For that in the said third supposed cause of action are not stated facts sufficient to constitute, create, or give rise to a lien on said vessel under any law or statute of the United States.

In all of which particulars said libel is imperfect and insufficient.

Wherefore this claimant is not bound to answer the same, and now prays this honorable court here that said libel be dismissed, and for his costs (pp. 14, 15).

These exceptions were sustained by the district court and the libel dismissed on the 30th August, 1882 (p. 16).

From this decree of the district court an appeal was taken to the circuit court (p. 17).

Afterwards, to-wit, on the 3d October, 1884, the circuit court affirmed the decree of the district court (pp. 19, 20).

On the 7th October, 1884, an appeal to this court was allowed by the circuit court (p. 20)

Grounds of Appeal.

That the circuit court erred in sustaining the claimant's exceptions to the libel.

Argument.

EXCEPTION TO FIRST COUNT.

The first count is based on sections 4252 and 4253 of the Revised Statutes of the United States, which are as follows:

> SEC. 4252. No master of any vessel, owned in whole or in part by a citizen of the United States, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place other than foreign contiguous territory of the United States, passengers contrary to the provisions of this section, with intent to bring such passengers to the United States, and leave such port or place and bring such passengers, or any number thereof, within the jurisdiction of the United States. The number of such passengers shall not be greater than in the proportion of one to every two tons of such vessel, not including children under the age of one year in the computation, and computing two children over one and under eight years of age as one passenger. The spaces appropriated for the use of such passengers, and which shall not be occupied by stores or other goods not the personal baggage of such passengers, shall be in the following proportions: On the main and poop decks or platforms, and in the deck-houses, if there be any, one passenger for each sixteen clear superficial feet of deck, if the height or distance between the decks or platforms shall not be less than six feet; and on the lower deck, not being an orlop deck, if any, one

passenger for eighteen such clear superficial feet, if the height or distance between the decks or platforms shall not be less than six feet, but so as that no passenger shall be carried on any other deck or platform, nor upon any deck where the height or distance between decks is less than six feet; but on board two-deck ships, where the height between the decks is seven and one-half feet or more, fourteen clear superficial feet of deck shall be the proportion required for each passenger. The term "contiguous territory," as used in this section, shall not be held to extend to any port or place connecting with any inter-oceanic route through Mexico.

SEC. 4253. Whenever the master of any such vessel takes on board of the same, at any foreign port or place, other than such contiguous territory, any greater number of passengers than in the proportion to the space or to the tonnage prescribed in the preceding section, with intent to bring such passengers to the United States, and leaves such port or place and brings such passengers within the jurisdiction of the United States, or takes on board his vessel, at any port or place within the jurisdiction of the United States, any greater number of passengers than in the proportion to the space or to the tonnage prescribed by the preceding section, with intent to carry the same to any foreign port or place other than such foreign contiguous territory, he shall be deemed guilty of a misdemeanor, and shall, for each passenger taken on board beyond such limit of space, be fined fifty dollars, and may also be imprisoned for not exceeding six months.

Now, it is by virtue of section 4270, Revised Statutes, that the penalty imposed by section 4253 (*supra*) is sought to be enforced as a lien against the vessel in question.

Section 4270 is as follows:

> The *amount* of the several penalties imposed by the foregoing provisions regulating the carriage of passengers in merchant vessels *shall be liens* on the *vessel violating* those provisions, and such vessel shall be libeled therefor in any circuit or district court of the United States where such vessel shall arrive.

The difficulty that has been made about applying section 4270 to the penalty of section 4253 because the penalty there denounced against the master *may* be imprisonment in addition to the fine of $50 for each passenger over and above the lawful number is a difficulty which is purely factitious.

To say that because the part of the penalty which *may* be imprisonment can not be enforced against the vessel and that it can not be separated from the pecuniary part because the two form one entire penalty is over-refining even in the case of a criminal statute.

The use of the word "amount" plainly imports a reference to the pecuniary part of the penalty.

The disposition to refine away section 4270 seems to have made the learned counsel blind to the plain language of the section.

The object of that section does not appear to be to enforce the penalties denounced by other sections against the master and owner of any vessel, but to create *additional* penalties by reference to those imposed by other sections and to make them applicable to *a new offender*, namely, *the vessel itself.*

It will be observed that the law does not make *the penalties* "imposed by the foregoing provisions" liens, but "*the amount* of the several penalties." And the "*amount*" ascertains with the requisite certainty the precise sum to be exacted as penalty "*from the vessel violating* those provisions." It is to punish the delinquent thing, *the vessel*, by imposing like penalties on it as had been previously imposed on the offending master and owner, that this section has in view.

The absence of reference in section 4270 to a previous proceeding against the master or owner or both to ascertain the amount of the penalties incurred by them in a given case, before setting on foot a proceeding against the vessel, is a strong circumstance to show that the proceeding contemplated in the section is an independent one, which may be taken without regard to the master or owner, although it would, no doubt, be held that a recovery against the vessel would be a bar to a proceeding against her owner for the same offense or offenses, and *e converso.*

It was the failure to see this intention of the statute to provide penalties for another delinquent, "the *vessel* violating those provisions," that produced the difficulty in the courts below, that perplexed Judge Lowell in the *Candace* (1 Low., 126), and Judge Hoffman in the *Ethan Allen* (3 Am. Law Rev., 372), two cases on which the claimant much relies.

It seems singular that it has not occurred to the courts, in applying section 4270, that upon the well-known canon of interpretation, *reddendo singula singulis*, the section might be applied to

the pecuniary part of such penalties as might also involve imprisonment, thus avoiding an interpretation which greatly impairs the efficiency of the passenger laws.

It is quite inadmissable to say that because the cases of the *Candace* and the *Ethan Allen* (*supra*) were decided before the enactment of the Revised Statutes, therefore Congress must be understood as having re enacted the law as expounded in those cases. If this court had spoken on the subject it might have been different, but certainly no such importance can be given to the decisions of one or two inferior courts of the United States. The inconveniences arising from such a doctrine would be very great.

THE EXCEPTIONS TO THE SECOND COUNT.

This count proceeds on an alleged violation of section 4255, Revised Statutes, which is in the following words:

> No such vessel shall have more than two tiers of berths. The interval between the lowest part thereof and the deck or platform beneath shall not be less than nine inches; and the berths shall be well constructed, parallel with the sides of the vessel and

> **separated from each other by partitions, as berths ordinarily are separated, and shall be at least six feet in length, and at least two feet in width, and each such berth shall be occupied by no more than one passenger; but double berths of twice the above width may be constructed, each berth to be occupied by no more and by no other than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family. For any violation of this section the master of the vessel, and the owners thereof, shall severally be liable to a penalty of five dollars for each passenger on board of such vessel on such voyage, to be recovered by the United States in any port where such vessel may arrive or depart.**

The argument in support of the exceptions to this count is that section 4253 has no application to steamers.

It is said that this is shown by the act of 3d March, 1855 (10 Stat. 715), now forming a large part of chapter 6, Title 48, of the Revised Statutes.

The argument is that notwithstanding the broad language of that statute, namely, "any vessel," seemingly authorizing the application of its provisions to steamers as well as sailing ves-

sels, Congress, by the tenth section, showed that it did not consider the words "any vessel" to include steamers, by expressly providing—

> That the provisions, requisitions, penalties and liens of this act relating to the space in vessels appropriated to the use of passengers are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam, etc.

This argument is advanced as applicable to the Revised Statutes. It is said that, as originally enacted, the Revised Statutes did not contain this provision of the tenth section of the act of 1855, and that afterwards, by the act of the 27th February, 1877, section 4264 was amended by the addition of the following:

> The provisions, requisitions, penalties, and liens enumerated in the several sections of this chapter relating to the space in vessels appropriated to the use of passengers are hereby extended and made applicable to all spaces appropriated to the use of steerage-passengers in vessels propelled in whole or in part by steam, and navigating from, to, and between the ports and in manner as herein named, and to such vessels and to the masters thereof; and the space appropriated to the use of steerage-passengers in vessels as above propelled and navigated

> is hereby made subject to the supervision and inspection of the collector of the customs in any port in the United States at which any such vessel shall arrive, or from which she shall be about to depart; and the same shall be examined and reported in the same manner and by the same officers directed in the preceding section to examine and report. (See § 4272.)

This amendment, the contention is, restores the *status quo* of the subject of passenger regulation to what it was under the act of 1855, and shows clearly that the regulations of chapter 6, title 48 (R. S.), are not applicable to steamers under the words "any vessel," but only to the limited extent imported by the amendment of section 4264 (*supra*) and by the tenth section of the original act.

Now it is urged that the effect of the amendment is to make applicable to steamers section 4252 (*supra*) only, which defines the amount of space in a vessel that must be given each passenger, and that section 4255 (*supra*) has no relation to *space*, but relates entirely to the manner in which such space shall be divided in so far as taken up with sleeping accommodations.

But this view falls short of what would seem to be the plain requirement of the amendment, which makes applicable to steamers all provisions "*relating to the space* in vessels appropriated to the use of passengers." Certainly it must be a narrow construction that a regulation as to the mode of constructing sleeping berths, having in view the health and morals of passengers, has *no relation to the space appropriated to their use.*

It would not strain the words of the law to hold that every regulation it contains that in any way touches the manner in which the space allotted to passengers shall be enjoyed is a regulation "*relating to the space in vessels appropriated to the use of passengers.*"

The narrow interpretation insisted upon by the appellee is sustained by the decision of the eminent district judge in the case of the Manhattan (2 Ben., 88), and by the case of the Devonshire. (8 Sawyer, 209; S. C., 13 Fed. Rep., 39.)

The case of the *Devonshire*, however, while yielding to the great authority of the other case, does not seem to accede to its reasoning, as is

apparent from the following extract from the opinion of the learned judge who delivered the opinion of the court:

> The argument of the district attorney in favor of the libel is that the provisions in section 2 are regulations relating to the "space" appropriated to passengers, and therefore made applicable to steam-vessels by the operation of section 10, because by them the "space" between such berth and that appropriated to each passenger therein is prescribed. And when we consider that the evils intended to be prevented by section 2 are as likely to exist in the case of steerage passengers carried in steam-ships as those against which section 1 is intended to guard, it is not without force.
>
> There is quite as much need that a steerage passenger shall have the "space" and privacy provided in section 2, when he lies down to sleep, or is prostrated with sickness, as that he shall have the general moving and breathing "space" between decks provided in section 1. And although the word "space" is not used in section 2, still that is the subject of it, and its division and appropriation among the passengers for the purpose of berths is thereby carefully and minutely regulated.

Certainly in a matter of so much importance it is eminently proper that this court should be appealed to to settle the meaning of the statute.

EXCEPTIONS TO THE THIRD COUNT.

This count is founded on section 4266 of the Revised Statutes, which is as follows:

> SEC. 4266. The master of any vessel arriving in the United States or any of the Territories thereof from any foreign place whatever, at the same time that he delivers a manifest of the cargo, and if there be no cargo then at the time of making report or entry of the vessel, pursuant to law, shall also deliver and report to the collector of the district in which such vessel shall arrive a list of all the passengers taken on board of the vessel at any foreign port or place; in which list he shall designate particularly the age, sex, and occupation of the passengers, respectively, the part of the vessel occupied by each during the voyage, the country to which they severally belong, and that of which it is their intention to become inhabitants; and shall further set forth whether any and what number have died on the voyage. Such list shall be sworn to by the master in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master to comply with the provisions of this section, or any part thereof, shall incur the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo. (See §§ 2774, 2807–2815.)

The same argument is relied on to support these exceptions as is urged in support of the exceptions to the second count, namely, that section 4264 does not extend the provisions in section 4266 to steamers.

This would seem, however, much too narrow a view. Is it reasonable to say that this important provision, requiring, under a penalty of $1,000, "the master of any vessel arriving in the United States or any of the Territories, from any foreign place whatever," to report and deliver to the collector a list of all passengers taken on board the vessel at any foreign port or place, with the particulars of age, sex, and occupation, the part of the vessel occupied by each during the voyage, the country to which they severally belong and that to which they are severally emigrating, and what number, if any, has died on the voyage, is it reasonable to say, we repeat, that these provisions, having so direct a bearing upon the regulations to prevent the overcrowding of passenger vessels, are not "provisions" and "requisitions" "*relating to the space in vessels appropriated to the use of steerage passengers?*"

It is respectfully submitted that the decree of the circuit court is erroneous and should be reversed.

WM. A. MAURY,
Assistant Attorney-General.

No.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

IN ADMIRALTY.

THE UNITED STATES,
Libellant and Appellant,

vs.

THE BRITISH STEAMSHIP "STRATHAIRLY," ETC.,
JOHN McINTYRE, JR.
Claimant and Appellee.

BRIEF FOR APPELLEE.

MILTON ANDROS,
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THE UNITED STATES,
Libellant and Appellant,

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THE BRITISH STEAMSHIP "STRATHAIRLY," ETC., JOHN McINTYRE, JR.
Claimant and Appellee.

Appeal from the Circuit Court of the United States, for the District of California.

BRIEF FOR APPELLEE.

The libel in this case was filed in the District Court of the United States for the District of California on the first day of July, A. D. 1882; and the claimant having interposed peremptory exceptions, such proceedings were had that on the 30th day of August, 1882, a decree sus-

taining the exceptions and dismissing the libel was duly entered. From this decree the libellant appealed to the Circuit Court of the United States, and on the 3d day of October, 1882, a decree was entered by that Court sustaining the exceptions, and dismissing the libel, from which decree the libellant appealed to this Court.

The proceeding is *in rem* against the British steamship "Strathairly," and the libel states three supposed causes of action :

I.

To recover the sum of sixteen thousand three hundred dollars for an alleged violation of the provisions of sections 4252 and 4253 of the Revised Statutes of the United States.

In this cause of action it is alleged that the steamship "Strathairly" was a British vessel owned by citizens of Great Britain, and "propelled in whole or in part by "steam." That W. B. Fenwick, the master thereof, brought on said steamer from Hongkong, China, three hundred and twenty-six steerage passengers in excess of the number fixed by law in proportion to the space or tonnage of said vessel; that by reason thereof, Fenwick, the master of said ship, became liable to a fine of fifty dollars for each of said three hundred and twenty-six passengers, amounting to sixteen thousand three hundred dollars, "and which said amount was and is made a lien "by the laws of the United States on said vessel, her "tackle, furniture, engines and apparel." Rec. p. 3.

It is further alleged in said first cause of action, that prior to the promoting of said libel a criminal information was filed in the District Court of the United States for the District of California, charging said Fenwick with the offense of unlawfully bringing from said port of Hongkong into the port of San Francisco said three hundred and twenty-six passengers in excess of the number that he could lawfully bring on said vessel; that Fenwick was duly arraigned on said information, and pleaded guilty of the offense of bringing on said vessel *two hundred and twenty-three* steerage passengers in excess of the number that he could lawfully bring on the same; that thereupon said Fenwick was duly sentenced to pay a fine of fifty dollars for each of said two hundred and twenty-three passengers, amounting in all to the sum of *eleven thousand one hundred and fifty dollars.* Rec. pp. 3, 4, 5.

To this cause of action McIntyre, the claimant of said ship, filed a peremptory exception:

"For that in the first supposed cause of action in said "libel are not stated facts sufficient to constitute, create "or give rise to a lien upon said vessel under any law or "statute of the United States." Rec. p. 14.

II.

To recover the sum of five thousand two hundred and eighty dollars for an alleged violation of the provisions of section 4255 of the Revised Statutes of the United States.

In this cause of action it is alleged that on the 17th day of April, 1882, at Hongkong, China, there were tak-

en on board of said steamship "Strathairly" 1056 steerage passengers for transportation to the port of San Francisco, California; that said 1056 steerage passengers were by said vessel transported to and landed at said San Francisco; that said vessel, at the time said steerage passengers were so transported from Hongkong to San Francisco, did not have the number of berths required by law for the accommodation of said passengers, nor were said berths constructed in the manner required by law; by reason whereof the master of said ship and the owners thereof became liable to a penalty of five dollars for each of said 1056 passengers, amounting in all to the sum of five thousand two hundred and eighty dollars; that no part of said fine had been paid, and that the same constitutes a lien upon said vessel.[Rec. pp. 5, 6.]

To this cause of action the defendant also excepted:

1. "For that in said second supposed cause of action "in said libel are not stated facts sufficient to constitute, "create or give rise to a lien on said vessel under any law "or statute of the United States.

2. "For that it appearing in and by said supposed "cause of action, that the said ship "Strathairly" was at "all the times in said libel mentioned a vessel propelled in "whole or in part by steam, neither the master nor owners "thereof are subject or liable to the penalty provided for "by section four thousand two hundred and fifty-five of "the Revised Statutes of the United States, and that no "lien does or can attach on said vessel under section four

"thousand two hundred and seventy of the Revised Stat-
"utes of the United States." Rec. p. 14.

III.

To recover the sum of one thousand dollars for an alleged violation of the provisions of section 4266 of the Revised Statutes of the United States, taken in connection with section 2774.

In this cause of action it is alleged that W. B. Fenwick, the master of said steamship, on the 17th day of April, 1882, took on board of said ship at Hongkong, China, 1056 steerage passengers, and transported them in said ship to the port of San Francisco; that on arriving at said last named port, the said master neglected and refused to deliver to the Collector of Customs at said port of San Francisco a list of all the passengers taken on board of said vessel and brought in her to the port of San Francisco; also, that said Fenwick, knowingly and wilfully, made out and delivered to said Collector of Customs a false list of said passengers, in which he reported that the whole number brought was 829 and no more, instead of 1056, the number alleged to have been actually brought and landed; by reason of which said Fenwick became liable to a fine of one thousand dollars.

To this cause of action the claimant excepted:

"For that in the said third supposed cause of action
"are not stated facts sufficient to constitute, create, or
"give rise to a lien on said vessel under any law or stat-
"ute of the United States." Rec. p. 14.

It is evident that the right of the libellant to recover, in whole or in part, in this proceeding depends entirely upon this question: Do the *fines* or any of them, denounced against the master of a ship for a violation of sections 4252, 4253, 4255 and 4266 of the Revised Statutes constitute a lien upon the ship?

In order to a solution of this question, it will be necessary to examine other sections of the same chapter of the Revised Statutes in respect to the carriage of passengers by sea, the amendments thereto, and also, in view of the judicial construction that has been given to similar provisions of the Act of March 3d, 1855 (10 Stats., Chap. 213, page 715), to compare these provisions with those of the Revised Statutes, which were taken, substantially, from the former Act. For convenience of reference, the sections of the Revised Statutes and the provisions of the Act of March 3d, 1855, to which we shall refer, are printed in an appendix to this brief in parallel columns.

On behalf of the appellee, the following propositions are submitted:

I. The fine denounced against the master of a vessel by section 4253 of the Revised Statutes of the United States for a violation of the provisions of that section, and of the provisions of section 4252 of said statutes does not constitute a lien on the vessel, and can not, therefore, be recovered by a proceeding *in rem.*

II. The provisions of section 4255 of the Revised Statutes do not apply to vessels propelled in whole or in

part by steam; and no action can be maintained against the master or owner of such vessel, or against the vessel itself, to recover the penalty mentioned in said section.

III. The provisions of section 4266 of the Revised Statutes do not apply to vessels propelled in whole or in part by steam; and no action can be maintained against the master of such vessel, or against the vessel itself, to recover the penalty mentioned in said section.

1. Under the first cause of action, the libellant seeks to recover, by a proceeding *in rem* against the steamship "Strathairly," not only the *fine* which the master of that vessel was, by a decree of the District Court of the United States for the District of California, condemned to pay on a proceeding against him by criminal information for a violation of the provisions of sections 4252 and 4253 of the Revised Statutes of the United States, but also $5150 in *excess* thereof. These sections are as follows:

SEC. 4252. No master of any vessel owned in whole or in part by a citizen of the United States, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place other than foreign contiguous territory of the United States, passengers contrary to the provisions of this section, with intent to bring such passengers to the United States and leave such port or place and bring such passengers, or any number thereof, within the jurisdiction of the United States. The number of such passengers shall not be greater than in the proportion of one to every two tons of such vessel, not including children under the age of one year in the computation, and computing two children over one and under eight years of age as one passenger. The spaces appropriated for the use of such passengers, and which shall not be occupied by stores or other goods, not the personal baggage of such passengers, shall be in the following proportions: On the main and poop decks or platforms, and in the deck-houses, if there be any, one passenger for each sixteen clear superficial feet of

deck, if the height or distance between the decks or platforms shall not be less than six feet; and on the lower deck, not being an orlop deck, if any, one passenger for eighteen such clear superficial feet, if the height or distance between the decks or platforms shall not be less than six feet, but so as that no passenger shall be carried on any other deck or platform, nor upon any deck where the height or distance between decks is less than six feet. But on board two-deck ships, where the height between the decks is seven and one-half feet or more, fourteen clear superficial feet of deck shall be the proportion required for each passenger. The term "contiguous territory," as used in this section, shall not be held to extend to any port or place connecting with any inter-oceanic route through Mexico.

SEC. 4253. Whenever the master of any such vessel takes on board of the same, at any foreign port or place, other than such contiguous territory, any greater number of passengers than in the proportion to the space or to the tonnage prescribed in the preceding section, with intent to bring such passengers to the United States, and leaves such port or place and brings such passengers within the jurisdiction of the United States, or takes on board his vessel, at any port or place within the jurisdiction of the United States, any greater number of passengers than in the proportion to the space or to the tonnage prescribed by the preceding section, with intent to carry the same to any foreign port or place other than such foreign contiguous territory, he shall be deemed guilty of a misdemeanor, and shall, for each passenger taken on board beyond such limit or space, be fined fifty dollars, and may also be imprisoned for not exceeding six months.

It will be observed that the punishment, denounced by section 4253 for the carriage of passengers in excess of the number allowed by section 4252, is confined to the master of the vessel, who, in such case, is to be deemed guilty of a misdemeanor, and shall be fined fifty dollars for each passenger taken on board in excess of the number allowed by law, and may also be imprisoned for a period not exceeding six months; that is, he may be both fined and imprisoned at the discretion of the Court, within the limits provided in section 4253. No mention whatever is made of any liability on the part of

the owner of the vessel or of the vessel itself for a violation of the provisions of either of the foregoing sections.

Now, sections 4252, 4253 and 4254 are, in all matters of substance, identical with section 1 of the Act of March 3d, 1855. 10 Statutes, Chap. 213, p. 715.

The only other section of the revised statutes relating to the bringing of passengers into the United States from a foreign port or place in which the punishment for a violation of its provisions is directed solely against the master of the vessel, is section 4262. This section provides that it shall be the duty of the masters of vessels employed in transporting passengers between the United States and Europe, to cause their food to be properly cooked, and to be served at regular and stated hours in such manner as shall be deemed most conducive to their health and comfort; and that "every master of any such "vessel who wilfully fails to furnish and distribute the "food in the quantity, and cooked in the manner required "by this Title, shall be deemed guilty of a misdemeanor, "and shall be fined not more than one thousand dollars, "and be imprisoned for a term not exceeding one year. "The enforcement of this *penalty*, however, shall not "affect the civil responsibility of the master and owners "to such passengers as may have suffered from such "default."

This section, together with the two sections next preceding, is the same as section six of the Act of March 3d, 1855.

It is to be observed that the word *penalty*, as used in section 4262, is not synonymous with *fine*. This *penalty*,

the enforcement of which is not to affect the civil responsibility of the master and owners, as provided in the last clause of the section, is the *fine and imprisonment;* it is, therefore, not the *fine* only that is designated as the *penalty*, but the *whole punishment* that is so designated.

Section 4270, which prescribes the mode of procedure for the recovery of the several *penalties* hereafter to be mentioned, is as follows:

> The amount of the several *penalties* imposed by the foregoing provisions regulating the carriage of passengers in merchant vessels, shall be liens on the vessel violating those provisions, and such vessel shall be libelled therefor in any circuit or district court of the United States where such vessel shall arrive.

The foregoing section is identical in all respects with the provisions of section 15 of the Act of March 3d, 1855, except that in the latter section the phrase "vessel "or vessels" is used.

Now, what are the "several *penalties* imposed by the "foregoing provisions" which are to "be *liens* on the ves- "sel violating those provisions?" This leads to an examination of "the foregoing provisions," for a violation of which a penalty, *eo nomine,* is denounced against the master and owners, recoverable by a proceeding *in rem* against the vessel, and to a comparison of them with the provisions of the Act of March 3d, 1855.

Section 4255 directs in what manner the berths on board vessels bringing passengers from a foreign port shall be constructed; and provides, that for a violation of this section, "the master of the vessel and the owners "thereof shall severally be liable to a *penalty* of five dol- "lars for each passenger on board of such vessel on such

"voyage, to be recovered by the United States in any "port where such vessel may arrive or depart."

This section is identical with section 2 of the Act of March 3d, 1855.

Section 4256 requires a *house* on the upper deck over the passage-way leading to the apartment allotted to passengers below deck, and provides how such house shall be constructed. This is identical with section 3 of the Act of March 3d, 1855.

Section 4257 provides for the *ventilation* of the apartments occupied by the passengers, and determines the size and construction of such ventilators. This section is identical with section 4 of the Act of March 3d, 1855.

Section 4258 provides for the number, construction and arrangement of the *cambooses* or *cooking ranges.* This section is the same as section 5 of the Act of March 3d, 1855.

Section 4259 provides that—

> The master and owner of any such vessel so employed, which shall not be provided with the *house* or *houses* over the passage ways, or with the *ventilators*, or with the *cambooses* or *cooking ranges* with the houses over them, required by this Title, shall severally be liable to a *penalty* of two hundred dollars for each and every violation of, or neglect to conform to, each of these requirements, to be recovered by suit in any circuit or district court of the United States within the jurisdiction of which such vessel may arrive, or from which she may be about to depart, or at any place within the jurisdiction of such courts, wherever the owner or master of such vessel may be found.

The provisions of section 8 of the Act of March 3d, 1855, are the same, except the penalty therein prescribed is fifty dollars instead of two hundred.

Section 4263 provides that the master of such passenger vessel is authorized to maintain good discipline, and such habits of cleanliness among passengers as will tend to the preservation and promotion of health; that their apartments shall be kept in a clean and healthy state, and makes other provisions of a similar character. It is then further provided in said section, that for each neglect or violation of any of the provisions thereof, the master and owner of the vessel shall be severally liable to the United States in a *penalty* of fifty dollars, to be recovered in any circuit or district court within the jurisdiction of which such vessel may arrive, etc.

The provisions of this section, so far as they relate to what is to be done by the master or owners of the vessel in respect to the discipline, cleanliness, etc., of the passengers, are identical with the provisions of section 7 of the Act of March 3d, 1855. And so far as they relate to the *penalty* and the *method of its recovery*, are identical with the provisions of section 8 of the Act of March 3d, 1855, for a violation of the seventh section of said Act.

The result of the foregoing examination, it is believed, clearly shows that by the provisions of Title 48, Chapter 6 of the Revised Statutes relating to the "transportation "of passengers and merchandise," as well as by the provisions of the Act of March 3d, 1855, two modes of punishment for violations of the various provisions of both Acts were to be employed; one, a *criminal* proceeding against the master *only*, the other, a *civil* proceeding against the master or both the *master* and *owner* for the

the *penalties* mentioned in these statutes, *the amount* of *which are made liens on the vessel.*

For a violation of the provisions of sections 4252 and 4262, the master of the vessel is to be deemed guilty of a misdemeanor, and is to be punished by *fine and imprisonment.* For a violation of the provisions of sections 4255, 4256, 4257, 4258 and 4263, *penalties* only are denounced against the *master and owner*, and for a violation of those of section 4266, taken in connection with 2774, against the master only, to be recovered by a suit, to be instituted in any circuit or district court of the United States having jurisdiction in the premises, and in respect to *these penalties only*, is a *lien* created against the vessel. It is these *penalties*, as distinguished from the *fines* which are made part of the punishment of the master for a misdemeanor, for which the vessel, as well as the master and owners, is liable. Nowhere in the statute are the words "*fine*" and "*penalty*" used interchangeably, or treated as synonymous terms. Whatever may be the definition given to them in text-books or dictionaries, Congress evidently intended to distinguish one from the other, as well as the modes of procedure by which they were to be enforced, and the persons against whom they were to be enforced. Had Congress intended that the fine by which the master is to be punished, in part, for carrying passengers in excess of the number authorized by law to be carried, or for failing to distribute proper provisions during the voyage should be a lien on the vessel as well as the penalties denounced against both him and the shipowner, it is reasonable to presume that it

would have expressed such intent by using, in section 4270, the word "fines" in connection with the word "pen-"alties," or in some other apt and unmistakable manner have expressed such intent, especially in view of the construction given as early as 1867 by more than one Federal Court to the fifteenth section of the Act of March 3d, 1855, which, as we have seen is re-enacted by section 4270 of the Revised Statutes. The attention of the Court is now called to these decisions.

The first case to which reference is made is that of "*The Candace*, 1 Low. 126. This was decided in February, 1867, and arose under the first and fifteenth sections of the Act of March 3d, 1855, the provisions of which are, as already submitted, in all substantial respects, the same as those of the Revised Statutes on the same subject, and under which the first count in the present libel is based. The Court held, "upon a careful consideration of the stat-"ute," that it did "not give a lien upon the vessel for the "fine which may be imposed upon him (the master) for a "violation of the first section of the Act," and the libel was accordingly dismissed. The judgment of the district court was affirmed on appeal by the circuit court.

The next case in which the point under consideration was decided is *The United States* vs. *The Ethan Allen*, 3 Am. Law Review, 372, decided by Judge Hoffman, July 30th, 1868, and the conclusion of the Court was the same as that arrived at by Judge Lowell. At the time that the case of "The Ethan Allen" was decided, that of "The Candace" had not been published, and neither the counsel in the former case—who is now submitting the present

case on behalf of the appellee—nor the Court was aware of Judge Lowell's decision, which was first published in April, 1869; 3 Am. Law Rev. 575. Two eminent judges, therefore, came to the same conclusion, and upon substantially the same grounds, without the benefit of each other's views on the subject. These decisions apply, therefore, with *more* than equal force to the construction of the same sections as engrafted into the Revised Statutes, because the opinion of Judge Lowell was published in his reports in 1872, about two years, at least, before the revision of the statutes of the United States was published. Now, "it is common learning" that when the Legislature, "in a later statute uses the "terms of an earlier one which has received a judicial "construction, that construction is to be given to the "later statute. And this is manifestly right, for, if it "were intended to exclude any known construction of a "previous statute, the legal presumption is that its terms 'would be so changed." 3 Gray, 450, and cases there cited.

It is, therefore, respectfully submitted that the exceptions to the first cause of action were properly sustained by the Circuit Court.

II.

The second cause of action is for an alleged violation of the provisions of section 4255 of the Revised Statutes, which relates to the construction of berths. This section is, so far as concerns the question involved, identical with the second section of the Act of March 3d, 1855.

The tenth section of the Act of March 3d, 1855, extends so much of that Act as relates to the "*spaces*" mentioned in the first section to "vessels propelled in "whole or in part by steam."

When the statutes of the United States were revised, the provisions of this section were omitted and were not incorporated into chapter six of title 48 of the Revised Statutes relating to "transportation of passengers and "merchandise." But, by the Act of Congress, approved February 27th, 1877, entitled "An Act to perfect the "revision of the statutes of the United States, and of "the statutes relating to the District of Columbia" (1 Supplement to Rev. Stat. 276), the whole of this section, except that part of it which repeals such parts of the Act of August 30th, 1852, as were in conflict with the Act of March 3d, 1855, was re-enacted and added, by way of amendment, to section 4264, which was identical with section 9 of the Act of 1855; so that the provisions of section 4264 of the Revised Statutes relating to passenger vessels propelled in whole or in part by steam, then became the same as those of sections 9 and 10 of the Act of March 3d, 1855, and so remained until November, 1882, when the Act of August 2d, 1882, took effect. This act repealed section 4252 and the sections following up to and including section 4277 of the Revised Statutes.

Before Section 4264, of Chap. 6, of Title 48, of the Revised Statutes was amended by the Act of February 27th, 1877, all the provisions of this chapter relating to the "transportation of passengers" applied to

any vessel engaged in bringing into the United States steerage passengers from the foreign ports or places named in section 4252, irrespective of the motive power of such vessel. The language of section 4252 is, "No "master of *any* vessel owned in whole or in part by a "citizen of the United States or by a citizen of any for- "eign country shall take on board," etc. Section 4364 directs "the collector of customs of any port at which "*any* vessel *so employed* or from which *any such* vessel "shall be about to depart" to appoint one or more of the inspectors to examine *such* vessel and report to him whether the requirements of *law* have been complied with in respect to *such* vessel.

Now, this amendment does not enlarge any of the provisions of sections 4252, 4253 and 4264. The language of these sections was sufficientiy broad to cover *any* vessel employed in the business to which they relate whether propelled in whole or in part by steam or otherwise. So, that, for such purpose, it was wholly unnecessary and useless and might be stricken from the statute without in any way affecting the provisions of the law as they existed when the amendatory Act was passed.

Now, it is a general rule of construction that every part of a statute must be viewed in connection with the whole, so as to make all the parts harmonious, if practicable, and give a sensible and intelligent effect to each. It ought not to be presumed that the Legislature intended any part of a statute should be without meaning, or without force and effect. It must, therefore, in view

of this rule, be assumed that when Congress, by the amendment to section 4264, declared that the provisions of Chapter 6, relating to the *space* in vessels appropriated to the use of steerage passengers are extended and made applicable to all *spaces* appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam, and also that vessels *so propelled* should, in respect to the *space* appropriated to steerage passengers be subject to the existing provisions of section 4264, it intended that this amendment should have some force and effect and not be a mere nullity. The amendment must, therefore, have been intended to restrict the provisions of these sections to vessels *not* propelled in whole or in part by steam, except as to those provisions which relate to the *space* to be appropriated to steerage passengers, and the examination by the inspectors of the customs to ascertain whether the requirements of the law relating to *such space* have been complied with, and these provisions, and these only, are, by the terms of the amendment, made applicable to vessels propelled in whole or in part by steam. To hold otherwise, it is respectfully submitted, will be to give no force or effect whatever to the amendment, and practicably to obliterate it from the statute.

Any judicial construction that has been given to the first and second sections of the Act of 1855, taken in connection with the 9th and 10th sections of that Act, is, at least, equally applicable to a construction of sections 4252, 4253, 4254 and 4255 of the Revised Statutes taken in connection with section 4264 as amended by the Act of February 27th, 1877.

Now, the provisions of the first and tenth sections of March 3d, 1855, were in 1868, considered and construed by the District Court of the United States for the Southern District of New York, in the case of "*The Manhat-*"*tan*," 2 Ben. 88. In this case the same question as that now under consideration arose, and Judge Blatchford, in an elaborate opinion, held that the provisions of the second section of the Act of March 3d, 1855, did not apply to vessels propelled in whole or in part by steam, and dismissed the libel. The decree of the District Court was affirmed on appeal by the Circuit Court.

That Congress, when it re-enacted section 10 of the Act of March 3d, 1855, by adding it, by way of amendment, to section 4264 of the Revised Statutes, knew of this decision, does not rest in legal presumption only, as the case of "The Manhattan" is cited in the first edition of the Revised Statutes in the margin of section 4255.

In the case of "*The Devonshire*," 8 Sawy. 209, the District Court of the United States for the District of Oregon, following the decision in "The Manhattan," held that section 4255 did not apply to vessels propelled in whole or in part by steam, and dismissed the libel. In the course of his opinion the learned Judge of that court says:

"The argument of the district attorney in favor of the "libel is that the provisions in section 2 are regulations "relating to the 'space' appropriated to passengers, and, "therefore, made applicable to steam vessels by the oper-"ation of section 10, because by them the 'space' between "each berth and that appropriated to each passenger

"therein is described. And when we consider that the "evils intended to be prevented by section 2 are as likely "to exist in the case of steerage passengers carried in "steamships as those against which section 1 is intended "to guard, it is not without force."

With due deference to this suggestion of the learned Judge of the District Court of Oregon, the force of the argument is not, to us, apparent. When Congress said, by its amendment to section 4264, "the provisions, requi- "sitions, penalties and liens enumerated in the several "sections of this chapter, relating to the *space* in vessels "appropriated to the use of passengers are hereby ex- "tended and made applicable to all *spaces* appropriated to "the use of steerage passengers in vessels propelled in "whole or part by steam," it evidently referred to what, in the statute, was designated as "*space* appropriated to "the use of passengers." Now, section 4252 provides that "the *spaces* appropriated to the use of such passen- "gers shall not be occupied by stores, etc., not the per- "sonal baggage of the passengers, and shall be in the fol- "lowing *proportions*." It then provides, with much particularity, for the number of superficial feet of deck room that shall be allowed each passenger, that is, the *space* to be appropriated to the use of each passenger.

Section 4253 declares that the master of any vessel who takes on board any greater number of passengers than in proportion to the *space* or tonnage prescribed in section 4252, shall for each passenger taken on board "beyond the limit of such *space* be fined fifty dollars" and may also be imprisoned.

Section 4254 provides, that when it shall be necessary for the safety or convenience of the vessel that any portion of her cargo or other article should be stowed in any of the places appropriated to the use of passengers, the same may be put in lockers or enclosures prepared for that purpose; but that the places thus provided shall not "be deemed to be a part of the *space* allowable for the "use of passengers," and that the upper surface of "such lockers or enclosed spaces, shall be deemed to be "the deck or platform" from which the measurements required by the statute shall be made; that "one hospital "in the *spaces* appropriated to passengers" may be prepared and "may be included in the *space* allowable for "passengers."

Section 4256 provides that all vessels, etc., "having "sufficient *space* according to law for fifty or more pas- "sengers" shall have a house over the passage way leading to the apartments of the passengers.

Section 4257 provides, that all vessels, etc., "having "*space* according to law for more than one hundred pas- "sengers" shall have two ventilators, etc.

Now it is evident that the word "*space*" as used in sections 4253, 4254, 4256 and 4257 relates to the *spaces* mentioned in section 4252, the proportions of which are defined and fixed by that section and by which the provisions of the other sections relating to "space" are to be governed.

Now neither in section 4255 of the Revised Statutes nor in section 2 of the Act of March 3d, 1855, of which the former section is in substance a copy, is the word

"*space*" used. When, therefore, the word "*space*" as used in section 4264 as amended by the Act of February 27th, 1877, can be clearly referred to every preceding section of the statute, where the word "*space*" is used, it would seem to be a forced and unwarranted construction of that section to hold that the word "*space*" as used therein, includes the interval between the bottom of the berths and the deck, or the construction of the berths parallel to the side of the ship and separated from each other by partitions, or to the length or breadth of the berths as provided for in section 4255. It is true that in a certain sense the interval between the bottom of a berth and the deck; the number of superficial feet that a berth, as a structure, may occupy; or the number of superficial feet that the partitions of such berth may enclose, is a space; but, is it not clear that neither of them is one of the "*spaces*" mentioned in or contemplated by the statute, but that, on the contrary, it is but a *division* of such spaces and not the spaces themselves.

III.

The third cause of action is for an alleged violation of section 4266 of the Revised Statutes, which requires the master of any vessel arriving in the United States from any foreign port or place at the time that he delivers the manifest of the cargo, or makes report or entry of the vessel, as the case may be, to deliver to the collector of customs of the revenue district in which such vessel shall arrive, a list of all the passengers taken on board at any

foreign port or place, in which list he shall designate the age, sex, and occupation of the passengers, respectively, the part of the vessel occupied by them during the voyage, the country to which they severally belong, and that of which it is their intention to become inhabitants, and also the number, if any, that have died on the voyage. And that, for any refusal or neglect to comply with the provisions of this section, he shall incur the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo, which, by section 2774, is a fine of one thousand dollars.

What has been said with reference to the liability of the "Strathairly" and its owners under section 4255, applies with equal force to their liability under section 4266. If the liability of the owners of a vessel propelled in whole or in part by steam be limited to the provisions of sections 4252 and 4253, it follows that they are not embraced within the provisions of the other sections of the Revised Statutes under which the proceeding in the present case is, in part, promoted.

It is, therefore, respectfully submitted that the decree of the Circuit Court sustaining the exceptions of the claimant to the libel and dismissing the same should be affirmed.

MILTON ANDROS,
Advocate for Appellee.

The provisions of the Act of March 3d, 1855, 10 Stats. Chap. 213, p. 715, and of the Revised Statutes, Tit. XLVIII, Chap. 6, with the amendment thereto referred to in the foregoing brief, are shown below in parallel columns:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no master of any vessel owned in whole or in part by a citizen of the United States, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place other than foreign contiguous territory of the United States, a greater number of passengers than in proportion of one to every two tons of such vessel, not including children under the age of one year in the computation, and computing two children over one and under eight years of age as one passenger. That the spaces appropriated for the use of such passengers, and which shall not be occupied by stores or other goods, not the personal baggage of such passengers, shall be in the following proportions, viz.: On the main and poop decks or platforms, and in the deck houses, if there be any, one passenger for each sixteen clear superficial feet of deck, if the height or distance between the decks or platform shall not be less than six feet; and on the lower deck (not being an orlop

SEC. 4252. No master of any vessel owned in whole or in part by a citizen of the United States, or by a citizen of any foreign country, shall take on board such vessel, at any foreign port or place other than foreign contiguous territory of the United States, passengers contrary to the provisions of this section, with intent to bring such passengers to the United States and leave such port or place and bring such passengers, or any number thereof, within the jurisdiction of the United States. The number of such passengers shall not be greater than in the proportion of one to every two tons of such vessel, not including children under the age of one year in the computation, and computing two children over one and under eight years of age as one passenger. The spaces appropriated for the use of such passengers, and which shall not be occupied by stores or other goods, not the personal baggage of such passengers, shall be in the following proportions: On the main and poop decks or platforms, and in the deck-houses, if there be any, one passenger for each sixteen clear

deck,) if any, one passenger for eighteen such clear superficial feet, if the height or distance between the decks or platforms shall not be less than six feet, but so as that no passenger shall be carried on any other deck or platform, nor upon any deck where the height or distance between decks is less than six feet, with the intent to bring such passenger to the United States, and shall leave such port or place and bring the same, or any number thereof, within the jurisdiction of the United States; or if any such master of any vessel shall take on board his vessel, at any port or place within the jurisdiction of the United States, any greater number of passengers than in the proportion aforesaid, to the space aforesaid, or the tonnage aforesaid, with intent to carry the same to any foreign port or place other than foreign contiguous territory as aforesaid, every such master shall be deemed guilty of a misdemeanor, and, upon conviction thereof, before any circuit or district court of the United States, shall, for each passenger taken on board beyond the limit aforesaid, or the space aforesaid, be fined in the sum of fifty dollars, and may also be imprisoned, at the discretion of the judge before whom the penalty shall be recovered, not exceeding six months; but should it be necessary, for the safety or convenience of the vessel, that any portion of her cargo, or any other articles or article, should be placed on, or stored in, any of the decks, cabins, or other places apsuperficial feet of deck, if the height or distance between the decks or platforms shall not be less than six feet; and on the lower deck, not being an orlop deck, if any, one passenger for eighteen such clear superficial feet, if the height or distance between the decks or platforms shall not be less than six feet, but so as that no passenger shall be carried on any other deck or platform, nor upon any deck where the height or distance between decks is less than six feet. But on board two-deck ships, where the height between the decks is seven and one-half feet or more, fourteen clear superficial feet of deck shall be the proportion required for each passenger. The term "contiguous territory," as used in this section, shall not be held to extend to any port or place connecting with any interoceanic route through Mexico.

SEC. 4253. Whenever the master of any such vessel takes on board of the same, at any foreign port or place, other than such contiguous territory, any greater number of passengers than in the proportion to the space or to the tonnage prescribed in the preceding section, with intent to bring such passengers to the United States, and leaves such port or place and brings such passengers within the jurisdiction of the United States, or takes on board his vessel, at any port or place within the jurisdiction of the United States, any greater number of passengers than in the proportion to the space or to the tonnage prescribed by the pre-

propriated to the use of passengers, the same may be placed in lockers or enclosures prepared for the purpose, on an exterior surface impervious to the wave, capable of being cleansed in like manner as the decks or platforms of the vessel. In no case, however, shall the places thus provided be deemed to be a part of the space allowable for the use of passengers, but the same shall be deducted therefrom, and in all cases where prepared or used, the upper surface of said lockers on enclosed spaces, shall be deemed and taken to be the deck or platform from which measurement shall be made for all the purposes of this act. It is also provided, that one hospital, in the spaces appropriated to passengers, and separate therefrom by an appropriate partition, and furnished as its purposes require, may be prepared, and, when used, may be included in the space allowable for passengers, but the same shall not occupy more than one hundred superficial feet of deck or platform: *Provided*, That on board two-deck ships, where the height between the decks is seven and one-half feet or more, fourteen clear superficial feet of deck shall be the proportion required for each passenger.

ceding section, with intent to carry the same to any foreign port or place other than such foreign contiguous territory, he shall be deemed guilty of a misdemeanor, and shall, for each passenger taken on board beyond such limit or space, be fined fifty dollars, and may also be imprisoned for not exceeding six months.

SEC. 4254. Should it be necessary for the safety or convenience of such vessel that any portion of her cargo, or any other article, should be placed on or stored in any of the decks, cabins, or other places appropriated to the use of passengers, the same may be placed in lockers or inclosures prepared for the purpose, on an exterior surface impervious to the waves, capable of being cleansed in like manner as the decks or platforms of the vessel. But in no case shall the places thus provided be deemed to be a part of the space allowable for the use of passengers, but the same shall be deducted therefrom; and in all cases where such lockers or inclosed spaces are prepared or used, the upper surface thereof shall be deemed the deck or platform from which measurement shall be made for all the purposes of this chapter. One hospital, in the spaces appropriated to passengers, and separate therefrom by an appropriate partition, and furnished as its purposes require, may be prepared, and, when used, may be included in the space allowable for passengers; but the same shall not occupy more than one hundred superficial feet of deck or platform.

SEC. 2. *And be it further enacted*, That no such vessel shall have more than two tiers of berths, and the interval, between the lowest part thereof and the deck or platform beneath, shall not be less than nine inches, and the berths shall be well constructed, parallel with the sides of the vessel, and separated from each other by partitions, as berths ordinarily are separated, and shall be at least six feet in length, and at least two feet in width, and each berth shall be occupied by no more than one passenger; but double berths of twice the above width may be constructed, each berth to be occupied by no more, and by no other, than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family; and if there shall be any violation of this section in any of its provisions, then the master of the vessel, and the owners thereof, shall severally forfeit and pay the sum of five dollars for each passenger on board of said vessel on such voyage, to be recovered by the United States in any port where such vessel may arrive or depart.

SEC. 4255. No such vessel shall have more than two tiers of berths. The interval between the lowest part thereof and the deck or platform beneath shall not be less than nine inches; and the berths shall be well constructed, parallel with the sides of the vessel and separated from each other by partitions, as berths ordinarily are separated, and shall be at least six feet in length, and at least two feet in width, and each such berth shall be occupied by no more than one passenger; but double berths of twice the above width may be constructed, each berth to be occupied by no more and by no other than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family. For any violation of this section the master of the vessel, and the owners thereof, shall severally be liable to a penalty of five dollars for each passenger on board of such vessel on such voyage, to be recovered by the United States in any port where such vessel may arrive or depart.

SEC. 3. *And be it further enacted*, That all vessels, whether of the United States or any foreign country, having sufficient capacity or space, according to law, for fifty or more passengers, (other than cabin passengers,)

SEC. 4256. All vessels, whether of the United States, or any foreign country, having sufficient space, according to law, for fifty or more passengers, other than cabin passengers, shall, when employed in transporting such pas-

shall, when employed in transporting such passengers between the United States and Europe, have, on the upper deck, for the use of such passengers, a house over the passage-way leading to the apartments allotted to such passengers below deck, firmly secured to the deck or combings of the hatch, with two doors, the sills of which shall be at least one foot above the deck, so constructed, that one door or window in such house may at all times be left open for ventilation; and all vessels so employed, and having the capacity to carry one hundred and fifty such passengers or more, shall have two such houses; and the stairs or ladder, leading down to the aforesaid apartment, shall be furnished with a hand-rail of wood or strong rope; but booby hatches may be substituted for for such houses.

SEC. 4. *And be it further enacted*, That every such vessel so employed, and having the legal capacity for more than one hundred such passengers, shall have at least two ventilators to purify the apartment or apartments occupied by such passengers; one of which shall be inserted in the after part of the apartment or apartments, and the other shall be placed in the forward portion of the apartment or apartments, and one of them shall have an exhausting cap to carry off the foul air, and the other a receiving cap to carry down the fresh air; which said ventilators shall

sengers between the United States and Europe, have, on the upper deck, for the use of such passengers, a house over the passage-way leading to the apartments allotted to such passengers below deck, firmly secured to the deck or combings of the hatch, with two doors, the sills of which shall be at least one foot above the deck, so constructed that one door or window in such house may at all times be left open for ventilation. All vessels so employed, and having the capacity to carry one hundred and fifty such passengers or more, shall have two such houses; and the stairs or ladder leading down to such apartments shall be furnished with a hand-rail of wood or strong rope; but booby hatches may be substituted for such houses.

SEC. 4257. Every such vessel so employed in transporting passengers between the United States and Europe, and having space according to law for more than one hundred such passengers, shall have at least two ventilators to purify each apartment occupied by such passengers; one of which shall be inserted in the after part, and the other in the forward part of the apartment, and one of them shall have an exhausting-cap to carry off the foul air, and the other a receiving-cap to carry down the fresh air. Such ventilators shall have a capacity proportioned to the size of the apart-

have a capacity proportioned to the size of the apartment or apartments to be purified, namely: if the apartment or apartments will lawfully authorize the reception of two hundred such passengers, the capacity of such ventilators shall each be equal to a tube of twelve inches diameter in the clear, and in proportion for larger or smaller apartments; and all said ventilators shall rise at least four feet six inches above the upper deck of any such vessel, and be of the most approved form and construction; but if it shall appear, from the report, to be made and approved, as hereinafter provided, that such vessel is equally well ventilated by any other means, such other means of ventilation shall be deemed and held to be a compliance with the provisions of this section.

SEC. 5. *And be it further enacted*, That every vessel carrying more than fifty such passengers, shall have for their use on deck, housed and conveniently arranged, at least one camboose or cooking range, the dimensions of which shall be equal to four feet long, and one foot six inches wide, for every two hundred passengers; and provision shall be made in the manner aforesaid, in this ratio, for a greater or less number of passengers; but nothing herein contained shall take away the right to make such arrangements for cooking between decks, if that shall be deemed desirable.

ments to be purified, namely: If the apartments will lawfully authorize the reception of two hundred such passengers, the capacity of each of such ventilators shall be equal to a tube of twelve inches diameter in the clear, and in proportion for larger or smaller apartments. All such ventilators shall rise at least four feet six inches above the upper deck of any such vessel, and be of the most approved form and construction. If it appears from the report to be made and approved, as provided in section forty-two hundred and seventy-two, that such vessel is equally well ventilated by any other means, such other means of ventilation shall be deemed to be a compliance with the provisions of this section.

SEC. 4258. Every vessel carrying more than fifty such passengers, and engaged in transporting them between the United States and Europe, shall have for their use on deck, housed and conveniently arranged, at least one camboose or cooking range, the dimensions of which shall be equal to four feet long and one foot six inches wide for every two hundred passengers; and provision shall be made in the same manner, in this ratio, for a greater or less number of passengers; but nothing in this section shall take away the right to make such arrangements for cooking between decks, if that shall be deemed desirable.

SEC. 6. *And be it further enacted*, That all vessels employed as aforesaid, shall have on board, for the use of such passengers, at the time of leaving the last port whence such vessel shall sail, well secured under deck, for each passenger, at least twenty pounds of good navy bread, fifteen pounds of rice, fifteen pounds of oatmeal, ten pounds of wheat flour, fifteen pounds of peas and beans, twenty pounds of potatoes, one pint of vinegar, sixty gallons of fresh water, ten pounds of salted pork, and ten pounds of salt beef, free of bone, all to be of good quality; but at places where either rice, oatmeal, wheat flour, or peas and beans cannot be procured, of good quality and on reasonable terms, the quantity of either or any of the other last named articles may be increased and substituted therefor; and, in case potatoes cannot be procured on reasonable terms, one pound of either of said articles may be substituted in lieu of five pounds of potatoes; and the captains of such vessels shall deliver to each passenger at least one-tenth part of the aforesaid provisions weekly, commencing on the day of sailing, and at least three quarts of water daily; and if the passengers on board of any such vessel in which the provisions and water herein required shall not have been provided as aforesaid, shall, at any time, be put on short allowance during any voyage, the master or owner of any such vessel shall pay to each and any passenger who shall have been

SEC. 4260. All vessels so employed in transporting passengers between the United States and Europe shall have on board, for the use of such passengers, at the time of leaving the last port whence such vessels shall sail, well secured under deck, for each passenger, at least twenty pounds of good navy bread, fifteen pounds of rice, fifteen pounds of oatmeal, ten pounds of wheat flour, fifteen pounds of peas and beans, twenty pounds of potatoes, one pint of vinegar, sixty gallons of fresh water, ten pounds of salted pork, and ten pounds of salt beef, free of bone, all to be of good quality. At places where either rice, oatmeal, wheat-flour, or peas and beans cannot be procured, of good quality and on reasonable terms, the quantity of either or any of the other last-named articles may be increased and substituted therefor; and, in case potatoes cannot be procured on reasonable terms, one pound of either of such articles may be substituted in lieu of five pounds of potatoes. The masters of such vessels shall deliver to each passenger at least one-tenth part of such provisions weekly, commencing on the day of sailing, and at least three quarts of water daily.

SEC. 4261. If the passengers on board of any such vessel in which the provisions and water shall not have been provided as required by the preceding section, shall, at any time, be put on short allowance during any voyage, the master or owner of any such vessel shall pay to each pas-

put on short allowance, the sum of three dollars for each and every day they may have been put on short allowance, to be recovered in the circuit or district court of the United States; and it shall be the duty of the captain or master of every such ship or vessel, to cause the food and provisions of all the passengers to be well and properly cooked daily, and to be served out and distributed to them at regular and stated hours, by messes, or in such other manner as shall be deemed best and most conducive to the health and comfort of such passengers, of which hours and manner of distribution, due and sufficient notice shall be given. If the captain or master of any such ship or vessel, shall wilfully fail to furnish and distribute such provisions, cooked as aforesaid, he shall be deemed guilty of a misdemeanor, and upon conviction thereof before any circuit or district court of the United States, shall be fined not more than one thousand dollars, and shall be imprisoned for a term not exceeding one year: *Provided*, That the enforcement of this penalty shall not affect the civil responsibility of the captain or master and owners, to such passengers as may have suffered from said default.

SEC. 7. *And be it further enacted*, That the captain of any such vessel so employed, is hereby authorized to maintain good discipline and such habits of cleanliness among such passengers as

senger put on short allowance, the sum of three dollars for each and every day such passenger may have been put on short allowance, to be recovered in the circuit or district court of the United States.

SEC. 4262. It shall be the duty of the master of every vessel employed in transporting passengers between the United States and Europe, to cause the food and provisions of all the passengers to be well and properly cooked, daily, and to be served out and distributed to them at regular and stated hours, by messes, or in such other manner as shall be deemed best and most conducive to the health and comfort of such passengers, of which hours and manner of distribution due and sufficient notice shall be given. Every master of any such vessel who wilfully fails to furnish and distribute provisions in the quantity and cooked in the manner required by this Title shall be deemed guilty of a misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned for a term not exceeding one year. The enforcement of this penalty, however, shall not effect the civil responsibility of the master and owners to such passengers as may have suffered from such default.

SEC. 4263. The master of any vessel employed in transporting passengers between the United States and Europe is authorized to maintain good discipline and such habits of cleanliness among

will tend to the preservation and promotion of health; and to that end he shall cause such regulations as he may adopt for this purpose to be posted up, before sailing, on board such vessel, in a place accessible to such passengers, and shall keep the same so posted up during the voyage; and it is hereby made the duty of said captain to cause the apartments occupied by such passengers to be kept at all times in a clean, healthy state; and the owners of every such vessel so employed, are required to construct the decks and all parts of said apartment so that it can be thoroughly cleansed; and they shall also provide a safe, convenient privy or water-closet for the exclusive use of every one hundred such passengers. And when the weather is such that said passengers cannot be mustered on deck with their bedding, it shall be the duty of the captain of every such vessel to cause the deck, occupied by such passengers, to be cleansed with chloride of lime, or some other equally efficient disinfecting agent, and also at such other times as said captain may deem necessary.

passengers as will tend to the preservation and promotion of health; and to that end he shall cause such regulations as he may adopt for this purpose to be posted up, before sailing, on board such vessel, in a place accessible to such passengers, and shall keep the same so posted up during the voyage. Such master shall cause the apartments occupied by such passengers to be kept at all times in a clean, healthy state; and the owners of every such vessel so employed are required to construct the decks and all parts of the apartments so that they can be thoroughly cleansed; and also to provide a safe, convenient privy or water-closet for the exclusive use of every one hundred such passengers. The master shall also, when the weather is such that the passengers cannot be mustered on deck with their bedding, and at such other times as he may deem necessary, cause the deck occupied by such passengers to be cleansed with chloride of lime, or some other equally efficient disinfecting agent. And for each neglect or violation of any of the provisions of this section, the master and owner of any such vessel shall be severally liable to the United States in a penalty of fifty dollars, to be recovered in any Circuit or District Court within the jurisdiction of which such vessel may arrive, or from which she is about to depart, or at any place where the owner or master may be found.

SEC. 8. *And be it further enacted*, That the master and owner or owners of any such vessel so employed, which shall not be provided with the house or houses over the passage-ways, as prescribed in the third section of this chapter, or with ventilators, as prescribed in the fourth section of this chapter, or with the cambooses or cooking ranges, with the houses over them, as prescribed in the fifth section of this chapter, shall severally forfeit and pay to the United States the sum of two hundred dollars for each and every violation of, or neglect to conform to, the provisions of each of said sections, and fifty dollars for each and every neglect or violation of any of the provisions of the seventh section of this chapter, to be recovered by suit in any circuit or district court of the United States within the jurisdiction of which the said vessel may arrive, or from which she may be about to depart, or at any place within the jurisdiction of such courts, wherever the owner or owners, or captain of such vessel may be found.

SEC. 4259. The master and owner of any such vessel so employed, which shall not be provided with a house or houses over the passage ways, or with the ventilators, or with the cambooses or cooking-ranges with the houses over them, required by this Title, shall severally be liable to a penalty of two hundred dollars for each and every violation of, or neglect to conform to, each of these requirements, to be recovered by suit in any circuit or district court of the United States within the jurisdiction of which such vessel may arrive, or from which she may be about to depart, or at any place within the jurisdiction of such courts, wherever the owner or master of such vessel may be found.

SEC. 9. *And be it further enacted*, That the collector of the customs at any port of the United States, at which any vessel so employed shall arrive, or from which any such vessel shall be about to depart, shall appoint and direct one or more of the inspectors of the customs for such port,

SEC. 4264. The collector of the customs, at any port at which any vessel so employed shall arrive, or from which any such vessel shall be about to depart, shall appoint and direct one or more of the inspectors of the customs for such port to examine such vessel, and report in writing to

to examine such vessel, and report in writing to such collector, whether the requirements of law have been complied with in respect to such vessel; and if such report shall state such compliance, and shall be approved by such collector, it shall be deemed and held as *prima facie* evidence thereof.

SEC. 10. *And be it further enacted*, That the provisions, requisitions, penalties, and liens of this act, relating to the space in vessels appropriated to the use of passengers, are hereby extended and made applicable to all spaces appropriated to the use of steerage passengers in vessels propelled in whole or in part by steam, and navigating from, to, and between the ports, and in manner as in this act named, and to such vessels and to the masters; and so much of the Act entitled "An act to amend an act "entitled an act to provide for "the better security of the lives "of passengers on board of vessels "propelled in whole or in part by "steam, and for other purposes," approved August thirtieth, eighteen hundred and fifty-two, as conflicts with this act, is hereby repealed; and the space appropriated to the use of steerage passengers in vessels so as above propelled and navigated, is hereby subject to the supervision and inspection of the collector of the customs at any port of the United States at which any such vessel shall arrive, or from which she shall be about to depart; and the same shall be examined and reported in the same manner and by the same officers by the next him whether the requirements of law have been complied with in respect to such vessel; and if such report shall state such compliance, and shall be approved by such collector, it shall be deemed prima-facie evidence thereof.

By the Act of February 27th, 1877, Chapter 69, entitled "AN "ACT TO PERFECT THE REVISION "OF THE STATUTES OF THE UNITED "STATES (1) AND OF THE STATU-"TES RELATING TO THE DISTRICT "OF COLUMBIA," Par. 141: 1 Sup-"plement to the Revised Statutes, "276; Section 4264 of the Re-"vised Statutes is amended as "follows:

"Section forty-two hundred and "sixty-four is amended by adding "at the end of the section the fol-"lowing:

"The provisions, requisitions, "penalties, and liens enumerated "in the several sections of this "chapter relating to the space in "vessels appropriated to the use "of passengers are hereby extend-"ed and made applicable to all "spaces appropriated to the use "of steerage-passengers in vessels "propelled in whole or in part by "steam, and navigating from, to, "and between the ports and in "manner as herein named, and to "such vessels and to the masters "thereof;

"And the space appropriated "to the use of steerage-passengers "in vessels as above propelled and "navigated is hereby made sub-"ject to the supervision and in-"spection of the collector of the "customs in any port in the United "States at which any such vessel "shall arrive, or from which she "shall be about to depart;

preceding section directed to examine and report.

"And the same shall be examined and reported in the same "manner and by the same officers "directed in the preceding section "to examine and report."

SEC. 15. *And be it further enacted*, That the amount of the several penalties imposed by the foregoing provisions regulating the carriage of passengers in merchant vessels, shall be liens on the vessel or vessels violating those provisions, and such vessel or vessels shall be libelled therefore in any circuit or district court of the United States, where such vessel or vessels shall arrive.

SEC. 4270. The amount of the several penalties imposed by the foregoing provisions regulating the carriage of passengers in merchant-vessels shall be liens on the vessel violating those provisions, and such vessel shall be libeled therefor in any circuit or district court of the United States where such vessel shall arrive.

SEC. 12. *And be it further enacted*, That the captain or master of any ship or vessel arriving in the United States, or any of the Territories thereof, from any foreign place whatever, at the same time that he delivers a manifest of the cargo, and if there be no cargo, then at the time of making report or entry of the ship or vessel, pursuant to law, shall also deliver and report to the collector of the district in which such ship or vessel shall arrive, a list or manifest of all the passengers taken on board of the said ship or vessel at any foreign port or place; in which list or manifest it shall be the duty of the said master to designate particularly the age, sex, and occupation of the said passengers respectively, the part of the vessel occupied by each during the voyage, the country to which they severally belong, and that

SEC. 4266. The master of any vessel arriving in the United States, or any of the Territories thereof, from any foreign place whatever, at the same time that he delivers a manifest of the cargo, and if there be no cargo, then at the time of making report or entry of the vessel, pursuant to law, shall also deliver and report to the collector of the district in which such vessel shall arrive a list of all the passengers taken on board of the vessel at any foreign port or place; in which list he shall designate particularly the age, sex, and occupation of the passengers respectively, the part of the vessel occupied by each during the voyage, the country to which they severally belong, and that of which it is their intention to become inhabitants; and shall further set forth whether any and what number have died on the voyage; such list

of which it is their intention to become inhabitants; and shall further set forth whether any and what number have died on the voyage; which list or manifest shall be sworn to by the said master, in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master aforesaid to comply with the provisions of this section, or any part thereof, shall incur the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo aforesaid.

shall be sworn to by the master, in the same manner as directed by law in relation to the manifest of the cargo; and the refusal or neglect of the master to comply with the provisions of this section, or any part thereof, shall incur the same penalties, disabilities, and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

[See §§ 2774, 2807—2815.]